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The American Political Science Review

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THE LEGAL MONISM OF ALFRED VERDROSS[1]

HENRY JANZEN
Hendrix College

During the last few decades, legal theorists have given increased attention to the relationship between municipal and international law. Few have attacked the problem with greater acumen than Alfred Verdross, who belongs to that school of Austrians, sometimes referred to as legal purists, with which the names of Hans Kelsen and Fritz Sander are so prominently associated. Verdross' contribution to legal theory has not found as wide an audience as it deserves. This inattention is probably due to the fact that the "theologians" of positivism dismiss Verdross' theory for his disbelief in the "holy trinity" of that school: the personified state, sovereignty, and the will of the state.

Verdross professes to adhere to the empirical method.[2] It will be seen that for him a norm is law only if it manifests itself in political reality. But, being a legal purist, Verdross is not concerned with, nor does he attempt to deal with, this objective actuality, i.e., his is not a sociological study. Verdross has been criticised for not limiting himself to a portrayal of facts and for affirming "*a priori* international legal norms, viewed as an international constitution."[3] The fact is that in Verdross' theory these particular norms are not presupposed; he attempts to derive them empirically as well as by logical deduction. Verdross postulates

[1] The term *monism* is used as an antonym not of *pluralism* but of *dualism*, and denotes a view which considers international and municipal law as one system.

[2] Unless otherwise indicated, the references to Verdross are to *Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung* (Tübingen, 1923).

[3] J. Mattern, "Alfred Verdross' Concept of the Unity of the Legal Order on the Basis of the International Constitution," in S. A. Rice, *Methods in Social Science* (Chicago, 1931), p. 134. Mattern says: "It is this conflict between the conceptual aspect of thought content of the premises and the alleged adherence to the empirical method which makes itself felt throughout the work."

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only law. He assumes that law exists as the biologist assumes the existence of life. Since his frame of reference is that of the legal purist, he cannot do anything else; he naturally strictly delimits his universe of discourse. In order to explain the origin and the source of law, he would have to make excursions into the realm of sociological phenomena. These, however, are not relevant to pure juristic theory, which, to be consistent, can operate only with its own specific material, namely, law.[4]

And, what if Verdross' theory has a "conceptual aspect?" Is the task of the jurist accomplished when he has portrayed the facts? An empirical analysis must be accompanied by the deductive method. Some criterion for appraisal must be set up.[5] And, if the inductive method is followed exclusively, it is difficult to determine what to include in the universe of discourse and to avoid the fallacy of the excluded middle. If a postulate is made on the basis of first superficial appearances, such a preliminary synthesis is a useful guide to scientific investigation until the problems are finally solved by positive empirical science. It is only when such premise is regarded as infallible that it proves an obstacle to further study and better knowledge of reality.[6]

Classifying legal theories on the basis of the view taken regarding the relationship of international and municipal law, Verdross distinguishes between dualistic and monistic interpretations. The dualists proceed from the assumption that international and municipal law are two distinct systems as to both source and content. They maintain that municipal law is the product of the will of a given state, and that international law, which binds only states as such, emanates from the common will of a number of states.[7] One of the best known exponents of this view is Triepel.[8] One

[4] Cf. H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (Tübingen, 1920), pp. 43, 83–86.

[5] To the legal purist, this criterion is the logical ideal.

[6] Some of the presuppositions of the positivists have proved to be such obstacles. For example, Professor Mattern, in summing up the differences between Verdross' theory and that of the positivists, says: "It all depends upon the will of the state, the same will which Verdross denies and which the state, and with it the positivist, affirms." Verdross' theory is found wanting because he does not postulate the will of the state as the *fons et origo* of all law. Professor Mattern finds no fault with Verdross' method of logical deduction, but criticises Verdross for his interpretation of facts, because it does not affirm the premises of the positivists. *Op. cit.*, pp. 135–136.

[7] Verdross, p. 46.

[8] *Völkerrecht und Landesrecht* (Leipzig, 1899).

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must point out in this connection that methodologically it is impossible to construe the unity of law if the point of departure is the disparity between the two norm systems. In other words, the contemporary validity of municipal and international law is inconceivable if the two systems are regarded as distinct from each other and as originating from different sources. In such a case, international law does not come within the purview of legal theory and the jurist must exclude it from his univêrse of discourse for the same reason that he must exclude ethics, for example. At any rate, he cannot designate these norms as law.[9]

The monistic school embraces two groups of theorists. One of them bases both the international law which binds a given state and its municipal law on the will of the state. According to this auto-limitation theory, to which Georg Jellinek[10] has been the chief contributor, the relationship is between international law and the state-person. The connecting link between the two is the will of the state.

Since Verdross has been criticised by one who subscribes to the will-theory, it seems proper to devote some space to an examination of the postulates of the auto-limitation school. In criticising this theory at large, it may be said that its crucial problem is the reconciliation of the supposition that the state produces law with the assumption that the state itself is bound by law. Jellinek, for example, asserts that his concept of the personified state is an abstraction and that it "exists" only in its organs, i.e., in the government. He alleges that these organs are identical with the state as a volitional entity; in other words, they are the state itself. If one dismisses the organs from one's thoughts, he says, the concept of the state also disappears. If this is true, the will of the state and its unity are doubtless fictitious; and Jellinek properly explains that the will of the state is not a psychic phenomenon but a product of juristic thinking. Having admitted the abstract character of the state and its will, Jellinek in some places rather inconsistently refers to the state as a *real* phenomenon, saying that no simulation takes place when a collective unit is made a

[9] Cf. Kelsen, *Das Problem . . .*, pp. 121, 123.

[10] *Allgemeine Staatslehre* (3 Auflage, Berlin, 1914); *Gesetz und Verordnung* (Freiburg i. B., 1887); *Die Lehre von den Staatenverbindungen* (Berlin, 1882); *Die rechtliche Natur der Staatenverträge* (Wien, 1880).

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legal person.[11] The allegedly formal theory seems to be pervaded by the tacit assumption that the state is a real person with a real will,[12] even though methodologically it is impossible to view the state simultaneously from two points of reference. Since the subject of legal science is law, the state must be viewed by the jurist in terms of law alone.[13]

To the legal purist, every person is only a fictitious personification of a norm-system; it is only the aggregate of rights and duties which are attributed to a real person or group of persons. Therefore the personified state is nothing but a figurative expression of the unity of the norms which give certain rights and duties to the organs of the legal system.[14] A person is subject to the will of another only in so far as this subordination is commanded by a norm. Persons are in authority only when installed by a norm, and their will is the will of the "state" only because they are commissioned by a norm to express this will. The legal norm, therefore, is the authority. The substantive "state," or the government, comes within the purview of legal theory only because a power delegated by law is not power in the real sense, but competence, and is, therefore, part of the legal system. The collective name of this legal system, which is an aggregate of norms and organs, is the *state*.[15]

Sovereignty is an attribute of the legal system only, and not of the substantive state. A legal order is sovereign when it is the highest original system, i.e., one which has not been deduced from any other system. We thus see that the concept of sovereignty is

[11] *Allgemeine Staatslehre*, pp. 170 ff.; *System der subjectiven öffentlichen Rechte*, pp. 2, 17, 125.

[12] This is the institutional fallacy which "attributes the unity which belongs to the act of thinking to the mass of objects to which the concept refers." L. T. Hobhouse, *The Metaphysical Theory of the State; A Criticism* (Allen and Unwin Ltd., London), p. 66. The idea of a *will* of a state-person is the result of a faulty analysis of certain phenomena. It is easy to see why the institutional fallacy appears again and again in legal theory. Such "objective psychical structures" as laws and the rules of morality suggest a super-individual psychical bearer. In a sense, they are products of collective activity; many individual minds contribute to the development of these entities. However, in their entirety they are merely conceptual contents and are independent of collective or individual persons. Only if they are conceived as a content of an individual mind may one say that they have a psychical bearer. Cf. N. J. Spykman, *The Social Theory of Georg Simmel*, pp. 51–54.

[13] H. Kelsen, *Allgemeine Staatslehre* (Berlin, 1925), pp. 7–8.

[14] Cf. Kelsen, *Das Problem . . .*, pp. 17, 18, 20.

[15] *Ibid.*, pp. 8–14, 16–17; *Allgemeine Staatslehre*, pp. 8–15.

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of a purely formal and negative character. In Jellinek's theory, however, it appears to be a real fact. By defining sovereignty as the exclusive competence of the state to determine its own competence and to impose limitations upon itself,[16] he identifies sovereignty with a concrete governmental function, namely, legislation. Thus he adds to the purely negative character of sovereignty (i.e., absence of limitation) a positive element, namely, the function of auto-limitation. The state supposedly limits itself by setting up a legal system. But the state itself is the legal system and, therefore, cannot create law, for law cannot create itself. With the actual original creation of the legal system, pure legal theory does not concern itself; its point of departure is the legal norm, not the social and political factors which enter into its making.[17]

The main difficulty of the whole auto-limitation school is the confusion of the *substantive* state with the legal system. The state appears, on the one hand, as the legal order; on the other, it seems to be subject to the legal order; in other words, the state is subordinate to itself. The state supposedly produces law, and at the same time is limited by law.[18]

Assuming for the present that the personified state possesses a will, it remains to be seen whether the auto-limitation theory is an adequate explanation of the obligatory nature of international law. Jellinek admits that considerations of morality and expediency induce the sovereign state to compromise its dignity to the extent of submitting itself to the rules of international law. "Formally," however, the state is supposed to be limited only if it so wills. But, having once joined the international legal community in accord with its own free will, the state is not supposed to be "legally" free to divest itself of the self-imposed limitations because of those un-"formal" considerations of morality and expediency. In other words, the content of a will relating to a certain line of conduct as expressed once is supposed to remain intact even after the will itself has ceased to be the same.[19] Thus Jellinek endeavors to preserve the objectivity of international law. He as-

[16] Jellinek, *Allgemeine Staatslehre*, p. 467.

[17] Kelsen, *Das Problem . . .*, pp. 16–17, 24–30, 43.

[18] *Ibid.*, pp. 17, 18, 20.

[19] Cf. *Die rechtliche Natur der Staatenverträge*, pp. 38, 41, referred to by L. Nelson, *Die Rechtswissenschaft ohne Recht* (1917); *Allgemeine Staatslehre*, pp. 465, 467. Cf. also Kelsen, *Das Problem . . .*, p. 184.

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serts, however, that if a law is repugnant to the highest interests of the state, the self-imposed limitation is at an end. For international law exists for the sake of states, and not states for the sake of international law; the state is above any legal rule.[20] In the same way, it could be said that municipal law exists for the sake of the citizens of the state, and yet it provides penalties for anti-social conduct.

Jellinek is right in asserting that there is no legal way of compelling a state to enter the international legal community. States join this community and abide by its rules because they have to do so. Life in international society can no longer be non-civic. Complete separateness of states is impossible because human interests can no longer be hedged in by state-frontiers. The interests which transcend the borders are just as important to people as those which they have within the state. Whether they are solidaric or conflicting interests, they require legal regulation. This is the reason why international law exists and why it generally is obeyed. The alleged will of the state has little choice in the matter.[21] No one believes any more in the doctrine of tacit consent inherent in the social contract theory. The auto-limitation theory of international law is just as fallacious.[22] And, why should one, out of

[20] *Allgemeine Staatslehre*, pp. 377, 741, 767; *Die Lehre von den Staatenverbindungen*, p. 54; *Die rechtliche Natur der Staatenverträge*, pp. 39–40.

[21] Governments do not in fact assert such freedom of action as Jellinek ascribes to them. Professor Garner says that in our time no state has declared that it would not be bound by international law, and that states act upon the principle that customary international law is binding regardless of consent. "Limitations on National Sovereignty in International Law," in this REVIEW, Vol. 19, p. 13. Professor Eagleton says: "As a matter of actual practice, chanceries no longer deny international law upon this ground," i.e., on the basis of sovereignty. *The Responsibility of States in International Law* (New York, 1928), p. 14. He also says that "when a state offers opposition to a claim under international law today, it is never a denial of the force of the authority of that law as a whole, but a denial that the particular rule invoked is really international law." *Ibid.*, footnote 27. In case of an alleged breach of international law, the offending state hardly ever claims that it is judge of its own actions, but defends itself by attempting to prove that no rule of international law has been violated. J. L. Brierly, *The Law of Nations* (Oxford, 1930), pp. 48–49.

[22] Cf. Brierly, *ibid.*, p. 38. Mr. Brierly states that in order to apply the consensual theory consistently one must rely on tacit consent; one must either assume consent where there has not been any in fact, or one must infer consent from the conduct of a "state." If tacit consent has the latter meaning, it is not true to fact; for in international practice "states" as a rule are treated as being bound by international law, even though it is obvious that a "state," for example a new "state," has never

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deference to the superannuated dogma of sovereignty, insist on a theoretical "legal" freedom when there is no concomitant actual freedom?

With regard to the binding force of treaties, it may be said that as long as it is based only on the state's will and on considerations of expediency and morality, it rests on a rather insecure foundation. Undoubtedly the desire is general that good faith be kept; it is one of the conditions essential for the stability of the international community life. But immediate interests of individual states at times conflict with this general interest in the observance of treaties, and a change in the "state's will" occurs. The direction which this "will" would take in such cases would be determined by immediate interests unless there were other factors to be taken into account. Nevertheless, Jellinek formally deduces the rule *pacta sunt servanda* from the will of the state.[23]

It may be said, therefore, that the auto-limitation school has not succeeded in making the metajuristic state as possessor of sovereignty, and its will as source of the obligatory nature of international law, comprehensible to those not versed in the psychology of fictitious beings.

We have seen that the auto-limitation school visualizes the will of the personified state as the connecting link between municipal and international law. The second group of monists regards international law and municipal law as essentially one system. To this last group belongs Verdross. Verdross does not regard the state as the creator of law or as the source of its binding force. His theory is singularly free from metajuristic concepts, such as the personified state or the will of the state. Viewing the state from a strictly juristic frame of reference, he regards it as a manifestation of law, as a certain legal status, as an aggregate of norms and organs which constitute a legal system (*Rechtsfigur, rechtlicher Tatbestand, Rechtskomplex*).[24] In other words, the state is identical

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consented to the law in any way, and yet, as a rule, will not deny its obligation to obey international law. If tacit consent has the former meaning, one may ask why one should resort to a fiction in order to support another fiction.

[23] *Die rechtliche Natur der Staatenverträge*, pp. 38, 41, referred to by Nelson, *op. cit.*, p. 61, and Verdross, p. 7.

[24] Verdross, pp. 1–2, 33. I feel justified in including organs in this description of Verdross' concept because he maintains that the power which "materializes" law is part of the norm.

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with law.[25] Therefore, in his opinion, the relationship is not between international law and the personified state, but between two legal orders. And he is not satisfied with a metajuristic tie, i.e., the will of the state. This will, according to Verdross, is a mere fictitious creation. To him, nothing but a purely legal connecting link is acceptable.[26]

As to the problem of primacy or sovereignty, Verdross holds that it is not solved by positing sovereignty in law.[27] Sovereignty signifies a certain rank in the hierarchy of law; that is to say, the highest legal system is sovereign.[28] Unlike Kelsen, Verdross believes that the jurist in constructing his theory does not have a choice between the primacy of either municipal or international law.[29] According to Kelsen, who also is a monist, which of the two systems is sovereign depends on the original hypothesis of the jurist, i.e., the legal theorist postulates as sovereign either the one or the other. If he considers the state to be the original and highest system, international law must derive its validity from the state, and *vice versa*.[30] In opposition to this point of view, Verdross maintains that it is not only necessary but possible to determine which of the two is the highest, i.e., sovereign, system.[31] Since the state is nothing but an aggregate of legal norms and organs (*Rechtskomplex*), the problem of sovereignty, he says, can be solved only by an empirical analysis of law. Accordingly, in order to find out whether a given legal system is sovereign, it is necessary to determine the place that it occupies in the totality of

[25] Professor Mattern says that this definition is an "affirmation requiring proof" (*op. cit.*, p. 120). It may be pointed out that the required proof can be found in H. Kelsen, *Der soziologische und der juristische Staatsbegriff* (1922) and in *Das Problem* . . . pp. 7, 9, 20, 83-86. And Verdross, on the first page of his book, refers to the discussions of Kelsen, Krabbe, and Sander. It may be said also that this is a definition, not an affirmation requiring proof. Of course, a premise must be identifiable with something real. But when one deals with a concept one must deal with it *qua* concept. As soon as one applies empirical methods to the analysis of the content of a concept or symbol, the concept progressively loses validity.

[26] Verdross, pp. VI, 1–3, 38.

[27] *Ibid.*, p. 11.

[28] *Ibid.*, pp. 31–34. In view of the evidence of the reality of sovereignty proffered by the positivists, Professor Mattern objects to Verdross' denial of sovereignty to the state. By definition, sovereignty is a formal concept, an *a priori* assumption which rests on an illusion of final authority. In reality, not even law is "sovereign" (supreme), because it is the product of an interplay of social forces.

[29] *Ibid.*, pp. 11–13, 76–77, 82–86.

[30] *Das Problem* . . . , pp. 95, 96, 103; *Allgemeine Staatslehre*, pp. 128–129.

[31] Verdross, pp. 11, 33–34.

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law. This can be discovered by an actual analysis of law and of the ways in which the various levels of law are connected.[32] In order to do this, Verdross discards the customary classification of law into administrative, criminal, civil, procedural, business law, etc. Being based on the purposes which law serves, this classification appears to Verdross as extraneous, metajuristic. Referring to the discussions of Adolf Merkl,[33] Fritz Sander,[34] and others, Verdross maintains that law is hierarchically arranged, the various levels in this pyramid being constitutional law, statutory law, executive decrees, administrative ordinances and decisions. He prefers this grouping because it is immanent in law, not extraneous.[35]

Having thus classified law, it remains to be determined whether both international and municipal law are parts of the same hierarchical system. Verdross holds that if there is any *legal* relationship at all between the two, a monistic construction cannot be avoided.[36]

Preparatory to discussing the relationship between municipal and international law, Verdross defines positive law. Law, he says, is a hierarchical system of norms which are materialized through acts of organs. Since this materialization must occur in a certain space and at a certain time, it is self-evident that only the legal system thus made effective is positive. And whether or not a given system is positive can therefore be ascertained by empirical methods.[37] It can be seen that this concept does not include an extraneous physical power giving sanction to law. Since statutory law comprises only one level in the hierarchy, and the term law embraces the totality of law, including administrative acts and judicial decisions, it is evident, according to Verdross, that the power which administers general rules is not a foreign element, but an integral part of law. Positive law, unlike natural law, he says, does not exhaust itself in general rules. These rules are part of positive law only when they are materialized in individual judicial decisions and executive or administrative acts. In other words, positive law is a synthesis of general rules and of the power that executes them.[38] Verdross is not concerned with ultimate

[32] *Ibid.*, pp. 33–34.

[33] *Juristische Blätter* (1918); "Das Recht im Lichte seiner Anwendung," *Deutsche Richterzeitung*, 1917.

[34] *Zeitschrift für öffentliches Recht* (1919), pp. 480 ff.

[35] Verdross, pp. 47–52.

[36] *Ibid.*, pp. 52–54.

[37] *Ibid.*, pp. 79–80.

[38] *Ibid.*, p. 81.

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sources and sanctions. What is important from his point of view is that certain rules are carried out by governmental agencies. Since law finds its limits in what people will endure, and since what they will endure depends on their opinions as to what is expedient and just, the materialization of norms by governmental agencies is concrete evidence of the rules of conduct which a given society is willing to accept at a given time. Verdross' definition of law, therefore, should be acceptable to the most exacting positivists. It is not based on any *a priori* assumptions, but defines law in terms of what actually is taking place. Being a strict purist, and excluding from his theory all metajuristic concepts and not being concerned with ultimate sources and sanctions, he is able to avoid the difficulties which most positivists encounter when they deal with these matters. Most of them, when they attempt to explain the sources of the obligatory nature of law, abandon the positivist attitude and have recourse to fictions which do not square with facts. This definition is also superior to those which make the derivation of law from the sense of right or the social consciousness of the community the criterion of positiveness.[39] Such a criterion is too vague and indefinite, and is not practicable unless supplemented by group-psychology.

It has been seen that Verdross applies the term "law" only to rules of conduct which are materialized by organs of the legal system, i.e., by governmental agencies. Thus he distinguishes law from norms enforced by various other means of social control—a distinction which can properly, and in fact ought to, be made in case the legal system is fully developed and well implemented. But it must also be kept in mind that law, in order to be materialized, need not necessarily be enforced by a superimposed or sovereign authority. The agencies are materializing law when they act according to law. This makes it possible to apply the term to the so-called "custom" of the British constitution, which certainly is not a command of the "sovereign." The rules which regulate international intercourse also readily fit into Verdross' concept, since it does not imply super-state agencies of formation and application. Like all primitive legal systems, international law, as Kelsen points out, is characterized by a multitude of organs; in fact, subject and organ are often identical in such systems.[40] The

[39] Cf. Krabbe, Duguit, Politis.

[40] *Das Problem der Souveränität*, pp. 257–259.

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important consideration is that international law is materialized; whether this is done by immediate organs of the international legal system or by organs of the state has no bearing on the legality of these norms.

Rebutting those who deny that international law is a unitary system because it lacks a central legislative authority, Verdross says that the unity of a legal system is not derived from a central authority. The legislative organ itself owes its existence to and derives its competence from a legal norm. And this organ need not necessarily be a determinate person or group of persons; it might be the factors forming customary and treaty law. Verdross holds that the unity of a legal system depends on the norms which form the peak of the legal pyramid, those norms from which the validity of all the other norms within the system is derived. To establish the fact that international law is a unitary system, it is therefore necessary to find those norms of international law which are analogous to the constitution in a state.[41]

Once recognized that positive law is a hierarchical system of norms which are being materialized by acts of organs, it is possible, according to Verdross to discover an unwritten constitution by analyzing the legal acts at the base of the pyramid with a view to finding the norms to which they ultimately refer.[42] Setting out in this manner to discover the international constitution, Verdross first of all shows that the obligatory nature of neither treaties nor customary law would be durable if it rested on provisions in state constitutions only. A treaty as such does not "create" law; it does, however, presuppose a legal norm which attaches certain legal consequences to the making of a treaty. It is, of course, a well known fact that all modern state constitutions have provisions empowering certain organs to make treaties. The question is whether this legal basis is adequate, in view of the fact that constitutions are relatively unstable. It is obvious that treaties cannot be more durable than the foundations upon which they rest, and consequently they would be void in case of a subversion of the constitution. However, governments generally admit that treaties remain binding even in case of a revolutionary change, and they generally act accordingly. Therefore, there must be at least some norms of international law which are above the states. Certainly, the rules

[41] Verdross, pp. 57–59.

[42] *Ibid.*, pp. 117–118.

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that treaties remain binding and that the juridical status of a state in international law remains the same regardless of a revolutionary change are among them. These norms which span the gap between the old and the new constitutions and the practice of their respective organs cannot themselves be based on the treaty-making power.[43]

Neither can the validity of customary international law be derived from provisions in state constitutions. It is often asserted that customary law is the result of express or tacit agreement which is brought about by joining several state-wills in the common purpose of forming general rules of international law. The will of the state, however, is not a psychological reality. There are only human wills. To ascribe a will to the state-person amounts to little more than a play on words, since the state person is merely an abstraction or even a fiction. Speaking of a will of the state, we presuppose a legal norm which designates a certain will or wills to be the will of the state. One might conceivably build a theory of international law on the basis of the constitutional provisions of individual states which stipulate whose will is to be considered as the will of the state in international relations. These wills would be the factors creating customary international law. However, resting on this legal basis, customary international law could not possibly elevate itself above the states. According to Verdross, there are, in fact, no stipulations in state constitutions providing for the formation of customary international law. If customary law is considered as resting upon agreement, it is conceivable that one might base it on the treaty-making power. But, in that case, it would be in the same position that treaties would be if they rested on state constitutions alone.[44]

Some say that customary international law originates through usage. Verdross, however, points out that practice does not create law, because if a state acts according to a certain rule, that rule must have existed prior to the action of the state. In other words, usage can materialize only a preconceived norm. Even if customary law came into existence through practice, it would be binding in the future only in case a legal norm were presupposed, which stipulates that states must act with regard to certain matters as they have acted on a previous occasion. It would not suffice to

[43] *Ibid.*, pp. 104–105.

[44] *Ibid.*, pp. 106–107.

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have this rule in state constitutions, since it would lapse with the termination of the constitution. But it is generally admitted that customary law remains binding regardless of revolutionary changes. Thus, there is an international norm, which spans the gap between the old and the new constitution and the practice of their respective organs. Customary law is thus above usage and above the constitutions of states.[45]

The auto-limitation school, of which Jellinek has been the most prominent exponent, has been unable to show that the norms which give a durable obligatory nature to treaties and customary international law originate through action that depends on state constitutions. And if one discards the metajuristic will of the state, it is easy to see, says Verdross, that the constitutions of states are not the highest level of law. An analysis of international legal norms leads to the conclusion that there is a higher level which embraces the state constitutions. The norms comprising this level form the constitution of the international legal order.[46]

This constitution employs primarily two means of developing general rules of international law, namely, treaties and custom. A subsidiary source of law is to be found in principles of justice and the doctrines of the publicists, as is evidenced by the frequent reference to them in international documents and judicial decisions when the matter in question is not covered by treaties or by customary law.[47]

The above-mentioned methods of procedure, according to Verdross, are not regulated by the international constitution in an exhaustive manner. The determination as to what organs are to carry out these functions is left to the state constitutions. The international constitution thus embraces the state constitutions, so to speak, and functions through their intermediary services. In other words, the states become organs of the international constitution and are entrusted with the development of international law. Thus the relationship between international and municipal law has been demonstrated. It has been shown that the constitution of the international legal order in an indirect manner is the constitution of the states, and thus it is the constitution of the unitary legal system of the world.[48]

[45] *Ibid.*, pp. 107–111.

[46] *Ibid.*, pp. 119–120, 126.

[47] *Ibid.*, pp. 120–126. These principles and doctrines are law only in so far as they are materialized by acts of organs.

[48] *Ibid.*, pp. 126–127, 133.

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By the methods of procedure which the international constitution provides, the states, according to Verdross, reciprocally allot their respective spheres of jurisdiction. In so doing, they distinguish between two kinds of competence, namely, one over those matters which are within the exclusive jurisdiction of the state, the other over matters which can be regulated only in conjunction with other states. Thus, even the internal competence of the states, in the final analysis, is based on the international constitution.[49]

One who argues in this connection that states existed before international law, and therefore cannot be dependent on it, is, says Verdross, confusing an historical with a legal relationship. In the case of a federation, the member states, even though they are prior in time to the union, derive their competence from the federal constitution; in like manner, since the international constitution has existed, states have moved within their delimited sphere of jurisdiction, even though their competence is of such a nature as to be called sovereign.[50]

Verdross says that if one considers the hierarchic structure of law, one discovers that not all of international law is on the same level or of the same rank. This is due to the fact that a large part of it is formed and carried out by a procedure and by organs which depend on the state constitutions. In this manner, treaties are made and executed and customary law is made effective. Thus international law is incorporated into national law, and, at the same time, municipal law provides the organs which serve the purposes of international law. Looked upon in this way, international law as a whole does not appear to be either above or subordinated to municipal law. Therefore one must deny the primacy of either of the two. However, there are some norms of international law which are above the states—those that were referred to above as the international constitution. All other rules of international law, i.e., those which elaborate and carry into effect the international constitution, come into existence and are carried out through the intermediary services of state organs. For the organs of the state, when functioning in the service of international law, are not organs of international law, but function by mandate of the state constitutions. Thus, says Verdross, they are only in

[49] *Ibid.*, p. 127.

[50] *Ibid.*, p. 128.

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an indirect sense agents of the international constitution, since, in the final analysis, all law is derived from the international constitution. Even the League of Nations and the international court, according to Verdross, are not organs of the international constitution in a direct sense; they too have been established by way of treaties.[51]

Some publicists deny unity to international law because of the possibility of conflicts between it and municipal law. Verdross meets their argument by insisting that international law provides the means of solving such conflicts by prescribing the procedure by which the refractory state may be coerced to repeal a repugnant law. The fact that two incompatible laws may exist contemporaneously does not destroy the unity of a legal order. Even within a state, a lower law which is contrary to a higher law is not *ipso facto* invalid; it possesses legal quality for all practical purposes until it is annulled in a prescribed manner by an authorized agency.[52]

The distinctive contribution of Verdross is his attempt to prove the unity of all law on the basis of some fundamental norms of international law—those norms which he calls the constitution of the international legal order. They are primarily the rules that treaties remain binding and that the international legal status of a state remains unchanged regardless of an internal subversion. Monistic interpretations of law have been attempted before, but Verdross' method is quite unique. He does not derive law from the will of the sovereign state, nor does he believe that the legal theorist has a choice as to which legal system is to be postulated as basic and supreme. By an empirical study of law, he has determined which norms actually are the foundation of the legal order of the world and thus give unity to the totality of law.

One merit of Verdross' theory lies in its objectivity. If Verdross postulates anything, it is the existence of general rules. But, unlike Kelsen, he does not consider conformity with these fundamental norms as the criterion by which the positiveness of all legal norms is to be determined. These general rules come within the purview of Verdross' theory only when they are made positive, i.e., when they are materialized by governmental agencies. Speaking generally, it is good scientific method to adopt one simple

[51] *Ibid.*, pp. 129–135.

[52] *Ibid.*, pp. 159–169.

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hypothesis as a guide to systematic study. And because Verdross so parsimoniously delimits his universe of discourse and discards all non-essentials, he is able to avoid many difficulties encountered by others. The objection to most legal theories is that they begin with a too complicated set-up. Usually the theorists postulate too much and therefore become involved in contradictions when they attempt to reconcile their theories with actual facts. In order to preserve their well-ordered theories, they have to support their original hypotheses by fictions.

Verdross' theory is not only fully as logical as the auto-limitation doctrine, but looked at from the pragmatic point of view, it appears to be more expedient, because it is not predicated on the dogma of sovereignty. The concept "sovereignty," since it has been introduced into legal theory, has been subject to an unusually high degree of oscillation. In the original theory, the existence of sovereign rulers or states was deemed no obstacle to the existence of a superimposed universal legal order.[53] But when the theory of the state and of law was taken in tow by the Hegelian philosophy, a reinterpretation of the concept took place. As developed by this school, the concept of sovereignty precluded the possibility of any except self-imposed limitations on the state. This new concept of sovereignty became also the center of interest of the international legal theory which came into prominence particularly in Germany during the last quarter of the nineteenth century. Assuming the legal omnicompetence of the state, international lawyers, nevertheless, either could not or did not wish to ignore the reality of international law. In order to reconcile the idea of an international law with the sovereignty of the state, and in order to include international law in their restricted definition of law, this school had to resort to metajuristic fictions. Nevertheless, the doctrine of sovereignty, which has degenerated into something like a word-fetichism, still has a strong hold on the minds of the people and prevents clear thinking on political matters. In fact, this dogma is one of the serious obstacles to the development of a system of public order in the world community. Verdross furnishes an adequate theoretical foundation for the view that the juridical isolation of the state has ceased to be a possible fact, and that the state is finding its place in a larger order.

[53] Cf. L. Nelson, *Die Rechtswissenschaft ohne Recht* (Leipzig, 1917).

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THE CLASSIFICATION OF INTERNATIONAL ORGANIZATIONS, II

PITMAN B. POTTER
Institut Universitaire de Hautes Études Internationales, Geneva

V

In any work of classification, the selection of standards is, of course, of primary importance. In the budget of the League, absurd results appear at various points as a result of arranging the contents thereof now according to one type of standard (subject-matter, as "Mandates"), now according to another (kind of service, as "Liaison").[51] Without coördinate and mutually exclusive standards, no classification can be complete or satisfactory.

One or two of the points made above might, it is obvious, be used as indices of classification if not used as grounds of exclusion. That is, if unofficial international organizations are not excluded entirely, as they logically should be, from this study, they might form one of the two classes of international organizations, along with official organizations. Similarly, organizations may be classified as bilateral and multilateral, in accord with the foregoing discussion, as resting upon mere practice or formal convention, as intended for the observance of some principle or for the taking of some overt action, and finally as relying upon national agencies for their operation or possessing agencies of their own. For our purpose, however, from this point onward, we shall assume that the organizations with which we deal are official multilateral organizations resting upon conventional constitutions and possessing agencies of their own, albeit what is said by way of further classification will, as a matter of fact, apply to the others to a large extent also.

Now the distinguishing characteristic of official international organizations, and their fundamental purpose, lies in their functioning as institutions for international government, for the exercise of control by one or more states over one another. Without arguing the logical possibility of "international government" here,[52] it may be averred simply that these organizations aim at action and results which, in spite of theoretical objections to the

[51] Budget for 1933, as cited above, note 8.
[52] See discussion in this REVIEW, Vol. 25, p. 713 (Aug., 1931).

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contrary, are in fact identical with those involved in the practice of government as such, i.e., control of certain individuals or groups by other individuals or groups.

But the practice of government may be carried on along entirely arbitrary lines. That is, the governors may govern at their own entire discretion or caprice, and absolute monarchs and dictators sometimes do so. For various reasons, however, chiefly to reduce the opposition of the governed, and give the activity a seemingly higher ethical tone, the consent of the governed is now usually sought and government conducted according to accepted law. The process of government then becomes one of making and applying the law.

This all leads to an entirely familiar analysis of governmental activities, which turns upon the relations between those activities, individually, and the element of law in the situation, namely, as legislative (law-making), executive or administrative (law-applying), and judicial, the judicial function constituting in fact a phase of the administrative and consisting largely of discovering and declaring what the law is on a given question arising in the course of administrative activity as a result of resistance thereto on the part of someone to whom the law is supposed to apply, and of assisting in the application of the law in that case.[53] This analysis is trite to the last degree, of course, but it must be recalled here because of the use which may have to be made of it in the classification of international organizations.[54]

[53] The similarities or differences between administration and adjudication cannot be discussed in full here, and what follows would not be greatly altered if the treatment of adjudication as a phase of administration were rejected. But in addition to what is suggested in the text it may be recalled, on the one hand, that administrative officials always have the task, deemed so peculiarly judicial in character, of discovering what the law is upon a given matter and what it means in that connection, while, on the other, the court has to perform two other, characteristically administrative, tasks, namely, to discover the facts of the case in their exact detail and to formulate a judgment applying the law (which it has discovered) aptly thereto—by order or decree or what not. See also, from the international point of view, the subservience of national courts to national legislative bodies where alleged conflicts between national and international law arise: *American Journal of International Law*, Vol. 19, p. 315 (April, 1925). Similarly for the distinction, if any, to be made between "executive" and administrative action; in so far as they differ, the former seems to retain more of the element of policy-determination than the latter, the latter to come upon the scene only when all need for this has been met. See below, near note 72.

[54] This analysis assumes, obviously, that law consists of propositions conscious-

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International organizations may indeed be classified with some success and advantage according to this standard. Thus a given international conference may be classified as legislative, a given international bureau as administrative, a court as judicial. All through the materials cited occur examples of institutions of these varieties, and the classification is so obvious and so familiar that it seems to amount to very little—this in spite of the fact that the necessity for ratification and the absence of sanctions deprive conferences on one point, and bureaus and courts on the other, of full status as legislative and administrative agencies, without, as is believed, destroying their position entirely.

Similarly, the generic institutions of international coöperation may be classified in this manner: conference as such, administrative bodies in general, international courts as a whole. The only danger to be encountered by such a procedure lies in the fact that within these fields the concrete examples vary somewhat from the typical. But inasmuch as in the preceding paragraph numerous concrete examples, when taken by themselves, reveal an overlapping of two or more functions, this mode of analysis seems as sound or accurate as the other. Thus the treatment or classification of such institutions in various writings on international organization today is sustained.[55]

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ly accepted by the parties thereto, and legislation of that process of acceptance. The fundamental conditions of life doubtless imply what rules should be adopted, but without that rational and volitional action those facts would remain outside the sphere of consciousness, the characteristic element of all social organization and action. It is necessary to go back of the law itself to find its origin, it has been truly said (Triepel, quoted by J. L. Brierly, in Académie de Droit International, *Receuil des Cours*, Vol. 23, p. 546), but the act of consent does lie outside of or behind the law, and it is to this last step before the appearance of the law, not to a more remote antecedent condition, that the student must go in his search. What is right or legal, what is law, in the sense of social life, is not what is harmonious with the conditions of life, and serviceable to man, but what is considered by men as harmonious therewith, or, at the most remote test, in accordance with the procedure adopted for determining this concordance. These positions will be accepted by all positivists without difficulty; at all events, they will be used as the basis for what follows.

[55] C. Eagleton, *International Government* (1932), pp. xi, xii; E. C. Mower, *International Government* (1931), pp. xv–xvi. For the sake of simplicity and brevity, the commission, or general or interim committee—an organ often found standing between conference and bureau in various unions—is ignored here. It is usually composed of national representatives rather than truly international agents and possesses legislative power as well as supervisory administrative power, but when compared with conference and bureau it appears as anomalous or ambiguous in character. See above, note 53.

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It will be recalled that the legislative-administrative classification turns upon the employment of law in government. This being the case, there is no room in this classification for forms of international coöperation which are pre-legal or pre-institutional. Thus diplomacy, which consists largely of negotiation and representation upon subjects not yet covered by legal regulation, falls chiefly in this position, although in so far as diplomats and consuls share in the making and application of international law and treaty agreements, they share in legislative and administrative (and even judicial) work, respectively. Likewise international law and treaties, which create unions, hardly rank on a plane with those unions themselves, even though they do create them and are in turn used as tools by such unions and their agencies.[56]

The proper classification of international organizations by this standard involves also, it seems, a problem of order of treatment. The proper relating of diplomacy and international law to this standard is, as has just been indicated, not simple. So also, it seems, difficulties arise in placing the element of sanctions in its proper place in the general scheme of things, and even in relating international legislation properly to diplomacy and conference, in placing alliances and concerts in their proper position, and so on. These questions cannot be discussed fully in this essay on classification, but they must be noted as phases or aspects.[57]

Much more difficult problems, however, lie beneath the surface here. Even if an organization or agency be clearly legislative, administrative, or judicial, it may not be clearly internationally legislative, internationally administrative, internationally judicial; and this not because of the presence of national, or the absence of international, elements in its membership, but for reasons connected with its activity. The case of the international court may be considered first, and then that of the administrative agency, and finally the conference.

When is a court entitled to be regarded as an international court? When (and only when) it applies international law?[58] But courts established by national authority apply international law,

[56] P. B. Potter, *International Organization* (3rd ed., 1928), p. 80.

[57] Review of Mower in *Political Science Quarterly*, Vol. 47, No. 3 (Sept., 1932).

[58] The law being defined as international by reference to its source, not its subject-matter or parties holding rights under it. See P. B. Potter, *Manual Digest of Common International Law* (1932), p. 5, etc.

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which is regarded as operative within the individual state upon and through these bodies,[59] and courts acting upon international authority apply national law when under international law this is required;[60] nor does the supersophisticated interpretation of these situations to the effect that the international law becomes national law in the former case and the national law, international law in the latter case seem to alter the situation. When (and only when) it deals with parties of divergent nationalities? But nationally-created courts deal with such parties[61] and it is at least conceivable that courts resting upon international mandate may handle cases between parties of the same nationality.[62] It would seem that the source of authority is the only safe test for the international character of the court, even though that may leave room for the possible handling by such courts of rare cases between parties of the same nationality and according to national law

In the field of administration, the situation is slightly different. International administrative agencies seldom apply national law (though they do at times),[63] but national administrative agencies constantly give effect to international law, both customary and conventional.[64] Are they, therefore, to be regarded as international institutions? Such international agencies operate upon states as such,[65] as do international tribunals, but they also operate upon private individuals,[66] nationals of only one state at the time. Does this affect their status as international bodies?

So, finally, for international conferences. They are most purely international in character, yet exhibit certain flaws. For example, such conferences deal with problems or questions of national conditions and interest only remotely international in character, and the line between domestic and international questions is by no means clear.[67] They reach results at times which call for national

[59] Same, pp. 74 and 170–171, esp. 170, note 195.1.

[60] Permanent Court of International Justice, *Publications*, Series A, No. 21.

[61] See Constitution of the United States, Art. III, sect. 2, cl. 1.

[62] Compare International Labor Organization *Constitution*, Art. 409.

[63] See various provisions in the Convention of Mannheim governing nagivation of the Rhine, and creating and empowering the Central Commission (e.g., Arts. XXII, XXXIV, XLIII), in *British and Foreign State Papers*, Vol. LIX, p. 470.

[64] See above, note 59.

[65] See powers of Rhine River Commission in Treaty of Versailles, Art. 359.

[66] Same, Art. 356.

[67] For example, the financial reconstruction of Austria. See League of Nations, Secretariat, *Ten Years of World Coöperation* (1930), pp. 183–189; also Bureau In-

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rather than international action, that is, action of a state upon its own nationals having only indirect international results.[68] And at times they are called in such a way and conducted in such a way that even these fundamental elements in their nature seem slightly less than truly international.[69]

The proper answer in the last two cases seems, nevertheless, to run along with that given for international courts. The source of the mandate is the test. Even if a commission or a conference were to be composed entirely of nationals of one state, as not infrequently happens in the case of international tribunals,[70] the organ is *pro tanto* an international organ if it acts on international instructions.[71] It remains such even if it deals entirely with national questions or invokes national law. Nevertheless, these variations or peculiarities deserve notice in any classification of international bodies.

One other possible and useful classification of international organizations flows from this same threefold analysis of governmental function with reference to law; it is, perhaps, but another aspect of the same thing. International organizations are either political or legalistic. That is, they are concerned either with the formulation, expression, synthesis, and adoption of national and international policy (ultimately involving creation of international law), or they are solely concerned with discovery and administration of existing law. Of course these two phases are inextricably intermingled in actual practice, at least in the sense that existing law is almost never so full or precise as to relieve administrative and judicial agencies of the need to interpret its provisions, giving rise to policy-determining activity on the part of the administrator and

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ternational du Travail, *La Réglementation des Migrations*, Vol. III: *Les Traités et les Conventions Internationales*, 1929.

[68] League of Nations, *Report of World Economic Conference* (1927), Vol. I, pp. 30–56.

[69] Compare the situation in the Pan American Union prior to 1923. G. H. Stuart, *Latin America and the United States* (2nd ed., 1928), p. 21.

[70] See the many cases of sole arbitrators, e.g., J. B. Moore, *International Arbitrations* (1898), p. 350.

[71] Not, however, if it acts merely by authorization or permission of international law, as do all national administrative agencies. Thus a national consul acts under authority of international law in viséing passports of aliens desiring to enter his country, but in so doing he is administering the national law and instructions of his own state; while an agency or official who carries out the law and instructions of an international body is *ad hoc* an international administrative organ.

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law-making on the part of the judge.[72] But the distinction is still important: policy formation, or law-making agencies, on one side, and law-administering agencies on the other; that the two types of function are often deliberately shared between the two sets of agencies, in addition to the inescapable blurring of the distinction already mentioned, does not alter the situation profoundly. Here also the organizations actually listed afford numerous examples.

Of course it is difficult to apply the foregoing classification to many existing international organizations or unions of states taken just as they are found, because these organizations embrace organs or agencies, both coördinate and hierarchical, performing different functions. Thus the International Labor Office boasts a General Conference (legislative), a Labor Office (administrative), and even a Commission of Inquiry (of a semi-judicial character). Indeed, all but a very small proportion of existing international organizations possess at least legislative and administrative organs. This does not mean that the suggested analysis is impossible of application or unfruitful of results, but merely that it must be applied to the individual organs of international unions rather than to the complete systems embracing those organs.

This explains in part, perhaps, the employment of other classifications in the *Handbook* and in common thought. Thus in the *Handbook* we find[73] the (official) organizations classified under two headings, with a further subdivision in the second class: (1) institutes maintained by governments and placed at the disposal of the League of Nations; (2) organizations established by collective treaties, distinguished as (a) bureaux under the direction of the League, and (b) others. In the first group are placed the Institute of Intellectual Coöperation, the Educational Cinematographic In-

[72] For practical reasons, these agents do not like to declare "no law" and wash their hands of a given problem, and sometimes existing codes of administration seem to make this impossible, however superior in sound juristic logic such action would be to the current practice. Of course if there is no law, the administrative agent need not move unless invoked to do so by an outside party, and when a court is asked to grant relief or apply a penalty it may conclude that no case has been made out justifying that action. But even these possible methods of escape do not entirely avert the action in question. Moreover, in international adjudication the court is seized of a cause by joint submission rather than unilateral action, and hence finds it harder still to escape by this avenue. See interesting discussion in A. A. Roden, "La Compétence de la Cour Permanente," *Revue de Droit International et de Législation Comparée*, Vol. 12, p. 757 (1931).

[73] *Handbook*, p. 9.

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stitute, and the Institute for Unification of Private Law. In the second are placed some thirty organizations, six or seven of which have been put under League direction, leaving a score outside, under the heading "Others."

It has been suggested already that this classification might be regarded as lacking something in realism and significance. It was, however, adopted in part for purely formal or administrative reasons; the distinctions made in the second part of the list derives from this source. At the same time, it does not appear that the placing of an organization under the direction of the League in accordance with Article XXIV of the Covenant constitutes any very important change in its character or even in its status. The organization continues to function as it did before and receives little but moral support or leadership from Geneva. Add to this the fact that the application of Article XXIV has varied somewhat in the different cases where it has been undertaken.[74] On the other hand, the small group at the top seems to be set apart for insufficient reasons. All three rest upon the action or agreements of the nations members of the League, and are subject to their control.[75] The fact that they are supported by French and Italian funds does not seem to justify their being set apart from the organizations in Group 2, which might well, therefore, be made to consist of three subdivisions.

The organizations in the *Handbook* are classified also by subject-matter.[76] The results are revealing, although the fact that the hundreds of unofficial organizations are mingled with the score of official organizations somewhat obscures the situation. Likewise the coëxistence of two or more organizations dealing with different aspects of the same subject, in four different cases, distorts the results to a certain degree.[77] From one point of view, this classifica-

[74] See discussion in same, pp. 6–8, and Ray, p. 667, etc.

[75] Summarized, with ample documentary citation, in Ray, p. 676, etc.

[76] *Handbook*, pp. 3, 296–312.

[77] Air Questions, International Conference on Private Law affecting.
Air Questions, International Technical Committee of League Experts on.
Danube, International Commission of the.
Danube, European Commission of the.
Danube, Permanent Technical Hydraulic System Commission of the.
Postal Union, International Bureau of the Universal.
Postal Union, International Bureau of the Pan-American.
Railway Transport, Central Office for International.
Railways, International Conference for Promoting Technical Uniformity on.

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tion is very significant, revealing as it does in what matters international organizations have arisen in greatest numbers[78] and where not, the above qualifications being duly taken into account and also the fact that the whole League organization and its subdivisions are omitted. From another point of view, however,—that, namely, which asks what these organizations do and can do in regard to the subjects intrusted to their care—it is not very informing.

One can, however, hardly imagine the editors of the *Handbook* classifying the international organizations or their agencies according to their functions in making or applying law, any more than one can imagine the average lay observer of international affairs doing so. It sometimes seems that such analytical classification is intentionally avoided by these observers. This may or may not be true, but the general and persistent ignoring of considerations of this order by most of the personnel of the international organizations existing today can otherwise only be explained by an amazing ignorance and unawareness of any systematic theory of state organization and action. Perhaps a desire not to see the actual powers of certain agencies defined too precisely or too narrowly has something to do with it. Perhaps hostility to effective international government in other quarters may be cited along with this, as a further reason for refusal to look at the problem analyti cally.

A final classification is suggested in the *Handbook*, namely, the geographical.[79] Without attempting to apply this standard rigorously, it may be seen clearly that most of these organizations—official and private—are made up predominantly of European elements, have their headquarters in Europe, and carry on most of their activities there. The fundamental reason for this is obvious—the large concentration in Europe of independent nations and international relations. Further inferences might be drawn here—erroneous as well as sound. For the moment, the matter may be allowed to stand.

How much, or just what, an organization may or can do with respect to the subject intrusted to its care is much more difficult

[78] Decreasing frequency groups: Humanitarianism, Religion, Morals; Arts and Sciences; Labor; Communications and Transit; Law and Administration; Education; Medicine; Sport; etc.

[79] See pp. 329–348.

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to determine. Make law and apply law, perhaps, in a general sense. But how far may it go in accomplishing these ends? How far may it go legally and how far may it go practically? What are the limits of its legal authority and of its actual (including physical) power?

As has been indicated, few, if any, of the ostensibly law-making international organs have power to make law except with subsequent ratification by the participating states.[80] Indeed, the composition of almost every international conference (equal, and strictly instructed, delegations from participating states) is such that it is hardly accurate to think or speak of the organ as such taking legislative action. It is rather the states themselves, in conference assembled (and later back in national capitals on the stage of ratification), which take the action. According to this test, virtually all conferences would fall in the same class: conferences with inconclusive authority.

On the other hand, various administrative and judicial bodies are clearly given, or at least clearly exercise, a degree of law-making power (power to make regulations or rules of procedure) which could be retracted or cancelled only after the fact and at times by the most cumbersome of processes.[81] This is said without reference to the possible legislative force inhering in administrative rulings by way of interpretation of existing laws or judicial decisions of the same type, already discussed. But it is also true that this incidental—sometimes it seems to be even accidental—power of legislation is so general among all administrative and judicial bodies as to lose its value as a means of identification. It might be added that this type of power is possessed in a certain degree also by international legislative bodies.[82]

Administrative and judicial authority is bestowed much more frequently in terms which make its exercise practically final. The possibility of appeal is sometimes provided in connection with

[80] Apparent exceptions may be found in the Recommendations of the General Conference of the International Labor Organization. But this is more apparent than real. International Labor Organization, *Dix Ans d'Organisation Internationale du Travail* (1931), p. 65.

[81] Legislative power in executive and judicial bodies. Convention of the International Institute of Agriculture, Arts. VI and VIII, and Statute of the Permanent Court of International Justice, Art. 30.

[82] Of conferences: rules of procedure of the General Conference of the International Labor Organization, as published by the International Labor Office, based on International Labor Organization Constitution, Art. 403.

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actions of international administrative[83] and judicial bodies,[84] but perhaps as often not. There remain always certain rights of a nation to defy such rulings for reasons of self-preservation.[85] But this is a precarious matter, resembles the alleged right of the individual to disregard what he believes to be an unjust law, and approaches the ethical rather than the legal. Speaking generally, international administrative and judicial organs exercise definite authority in their activities, as do international legislative bodies when performing administrative tasks. This is particularly true for administrative organizations to which has been delegated the exercise of territorial or personal jurisdiction over individuals (in contrast to those ministering to the nations as such);[86] although this difference does not, otherwise, seem to hold great importance as a basis of classification, being simply a mode or aspect of the difference of degree of authority here being considered.

When the question of factual influence and power is raised, the answer is much the same, with one very important addition. International legislative bodies, i.e., international conferences, do not wield decisive influence, and have no means of compelling respect for their decisions. Ratifications are delayed and withheld almost without hesitation or thought for any prestige or moral importance of the conference. No conference has anything like the assumed power to command—the feeling of authority which is matched by a similar respect among the objects of its commands—possessed by national legislative bodies. By contrast again, the actual influence of international administrative bodies and international courts is great, the deference paid to them substantial. Where administrative bureaus are created for performance of indecisive functions, such as collection of information, no great respect is paid to them, and often their light requests are disregarded as the more exacting demands of other bodies are not. But when bureaus and courts speak with a pretense of authority, they seem to exercise sufficient influence to be obeyed.

The great qualification to all this is found in the fact that none

[83] Convention of the Universal Postal Union (1929), Art. 10.

[84] Statute of the Permanent Court of International Justice, Art. 61. See also J. H. Ralston, *Law and Procedure of Arbitral Tribunals* (1926), p. 207.

[85] This is simply a phase of the general right of self-preservation. See discussion in P. Fauchille, *Traité de Droit International Public*, 1922 (Bonfils, *Manuel*, 8th ed.), p. 410.

[86] Best exemplified in the river commissions: above, notes 65 and 66.

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of these bodies possesses equipment or powers of physical action for enforcement of its decrees or legal power to call upon either national or international agencies for such action (sanctions).[87] So long as the psychological—political, moral, or what not—influence of these bodies is adequate, this is not of great importance; but it must always be borne in mind because of its importance in the extreme case and because of its indirect influence all along the line.

All this being true, the classification of international organizations by reference to degree of legal authority of factual power seems too complicated and inconclusive to be valuable. Variations among individual conferences, bureaus, and courts would appear, as among these types of organs in general, but no great or significant distinctions could be made beyond those recited above, which, with one exception, are of such a nature as to render classification difficult rather than simple. The problem assuredly repays study, but the facts are not such that the results can be formulated in terms of a classification.

It may already have been felt that there were so many qualifications necessary likewise in connection with the legislative-administrative classification that it also was less than entirely satisfactory. Have not all of these suggested standards—relations to law, relations to the League, subject-matter, degree of authority, and of power—failed to give us what we want? Perhaps a simpler and less technical, and at the same time a more pragmatic, standard may be useful. Let us ask just what kind of services, in a quite common sense of that term, existing international organizations offer and see whether a significant grouping will not emerge from the replies.

International organizations, or some of them, concentrate upon collection and distribution of factual data. Others conduct studies of (the data of) social problems and make their findings publicly available. Still others make recommendations to states or to other organizations based on their findings,[88] and perhaps facilitate the

[87] For two remote approaches to such an arrangement, see Covenant of the League of Nations, Art. XIII, par. 4, and International Labor Organization Constitution, Art. 414.

[88] The whole question of the relations among international organizations has been passed over lightly here (but see above, near notes 15 and 16) because it does not offer much aid in classification. If organizations are intimately related, they are not likely to be distinct organizations. If one organization controls another, this is sure to be true; also if one acts as agent for, or servant to, another. See, for example, Covenant of the League, Art. VI.

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adoption of such findings by the states, by sponsoring conferences where they may be discussed. And finally, others supervise the carrying out of such results or carry them out themselves. Is this not a more significant classification than any suggested so far? It turns, obviously, upon the type of service performed in relation to the utilization of scientific truth in international social practice, and perhaps this is about as fundamental a test as could be adopted as the basis for our analysis.

There are, of course, two or three general qualifications which have to be admitted here as in connection with the classifications already attempted. There are organizations which perform two or more of the services just outlined.[89] There are those whose services do not seem to fit exactly into this scheme at all—the general difficulty of any classification.[90] And there is the fact, likewise noticed in another connection, that the people engaged in the operation of these organizations are, most of them, so interested in the subject-matter of their activity, or in good international relations and feelings, or so naïve and unconscious of such problems of theory, that the work is carried on without that distinctness of character which would be evident if those engaged in it were conscious of its logical place in the general scheme of things.

More serious still is the fact that this classification appears too weak in its separate items and in its general structure to break across or disrupt the more fundamental legislative-administrative classification; collection of data, study, recommendation—these are not vigorous concepts, nor are the relations or transitions from one to the other very compelling or inevitable.

What is finally decisive is the fact that this classification turns out, upon examination, to be but a variant upon the fundamental one just mentioned. Adoption of findings and carrying out the results thereof really amount exactly to legislation and administration, and nothing else. All else is merely preparatory and subsidiary. These steps may be taken by the organization itself, or, if it be merely advisory, by the states, but their nature is clear. Similarly, the international organization may advise individual states, their legislatures, or their administrative agencies, as to how to attain their objectives most effectively, or even seem, in rare cases, to act

[89] Convention of the International Institute of Agriculture, Art. IX.

[90] No court, for example, would fit into this scheme.

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as an agency in a national governmental system;[91] but the nature of the organization will still be most clearly understood if related to the main classification already employed. The last suggested classification is but an elaboration upon the earlier one.

This elaboration may be useful. The task of international organization is, in general terms, to facilitate the communication of national policies and views by one state to another, their reconciliation, synthesis, and adoption as international law, and the execution of the latter.[92] For progress in this direction, most emphasis must be placed upon the process of reconciliation of discordant views and policies, in view of the seeming great discord actually existing among such policies. It is precisely by the collection and distribution of data, in the study of problems and the making of recommendations based thereon, by public agencies or (it may be admitted in this connection) by unofficial scientific agencies, that this may best be promoted. And perhaps agencies for study and recommendation rather than conferences for discussion are the most effective agencies that could be used here. Hence this analysis emphasizes one phase of the activity of international organization which is neglected in the somewhat brutal or over-simplified "legislative-administrative" analysis, and this (in the present circumstances) not the least important part.[93]

VI

In summary, it would appear that effective analytical and classificatory study of the existing international organization or organizations has been somewhat lacking in the past, that this is explainable by various different reasons, including the practice and study of international organization by persons not adequately trained in systematic political and juristic theory, and that this has led to disappointing, if not dangerous, results, such as misconception of the parts to be played by men and agencies alike. The proper constitution or composition of international organizations, their proper organization, their proper conduct or operation,

[91] See position of the Quarantine Council in Egypt: *Conférence Sanitaire Internationale* (1926), pp. 69, 508, and Z. Loutfi, *La Politique Sanitaire Internationale* (1906), p. 106.

[92] See brief summary in *Encyclopaedia of the Social Sciences*, 1930, Vol. VIII (1932), p. 177 (article "International Organization").

[93] Argued more fully, in a particular case, in P. B. Potter, *Revision of Treaties*, 1933 (pamphlet), p. 16.

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and hence satisfactory results, all depend upon an understanding of the nature of the process of government in general and of its various detailed aspects in particular. If a conference is manned from among persons of no capacity as political leaders or legislators, but of rigid administrative temper—if a court is organized like a representative assembly, if the activity of a bureau is conducted in the spirit of a debate—things will not go well.[94] Contemporary international organization is being conducted largely by persons who are rather absorbed in some specific cause (in terms of subject-matter) or in the general cause of international coöperation, but who know and care little about the technique of conducting public affairs in an orderly and systematic manner. National government suffers from this deficiency also, yet is far ahead of international coöperation in this respect. And the science of international organization is marred by similar, though less serious, inadequacies of understanding on the part of students of the problem. It seems that changes must take place here before changes can be looked for in the results achieved.[95]

[94] Deliberate efforts to utilize an organ for a function for which it was not intended may—or may not—succeed better; thus friends of international coöperation holding posts on administrative bodies at times attempt to have such agencies exercise power to make new law and engage the responsibility of member-states thereby, beyond the point to which the latter have previously been willing to go, and sometimes this manoeuvre succeeds. See, above, p. 32, and "Revision of Treaties," in *Geneva Special Studies*, Vol. 3, No. 9 (1932), p. 10. There are also those—sometimes placed on such bodies internationally—who are, *per contra*, strict constructionists for opposite reasons.

[95] The draft-text of this paper was discussed extensively with the members of the writer's seminar in international administration at the Graduate Institute of International Studies, Geneva, and embodies numerous contributions made by them.

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The Gubernatorial Controversy in North Dakota. Although many of our states have exhibited unsettled political conditions in recent months, North Dakota has passed through a unique experience in having four different governors occupy the executive office in six and one-half months. Twice during this period, the supreme court of the state has been requested to determine the right of the governor to hold office, and in each instance it has elevated the lieutenant-governor to the office. The first occasion resulted from the conviction of Governor William Langer of a felony after a trial in the federal district court, and the second involved the constitutional qualifications of Governor Thomas H. Moodie, elected last November.

For a better understanding of the events of recent months, it is advisable to describe briefly the general political situation in North Dakota.[1] For many years, the Republican party in the state has been divided into two factions. The conservative wing is known by the term Independent Voters' Association, or I. V. A.; and it is opposed within the party by members of the Nonpartisan League.

As the primary elections of 1932 approached, conditions presaged a return to power of the League faction. Consequently, when the League delegates assembled in convention to choose a slate for the Republican primary, rivalry for the position of governor was particularly keen. After a bitter fight on the floor of the convention which threatened to result in a deadlock, William Langer was chosen to head the state ticket. In spite of hard feelings resulting from the convention struggle, the forces of the Nonpartisan League rallied sufficiently to win the Republican nomination for their entire state ticket. In the general election on November 4, 1932, Langer easily defeated his Democratic opponent.

Shortly after assuming office in the following January, Governor Langer took steps to build an effective organization to maintain his personal control of the party and of the government. Large-scale dismissal of employees in all of the executive departments was followed by the appointment of persons loyal to the governor's leadership. As a further means of effecting this organization, a newspaper was purchased which became known as *The Leader*, and which was used to further the ends of the administration. In order to finance this enterprise, the governor required that all employees under the control of the executive department purchase subscriptions to *The Leader* to the equivalent of five per cent of each employee's annual salary.

[1] The description of the political background and of the events leading up to Governor Langer's trial are based upon the writer's observations and general knowledge of the situation as a resident of the state during the period under study.

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Eventually, complaints reached Washington that persons receiving compensation from federal relief funds had been solicited and were contributing to funds for political purposes.[2] The administration of these funds was in the hands of a committee appointed by Governor Langer and headed by Justice A. M. Christianson of the supreme court. After agents of the federal Department of Justice had investigated the complaints, Harry L. Hopkins, relief administrator, wired the governor that the relief administration work was being taken from the hands of the state committee. Judge Christianson, however, was named federal relief administrator.

In April, 1934, a federal grand jury met in Fargo and returned two indictments against the governor and eight of his political associates.[3] The indictments charged the nine men with soliciting and collecting money from federal employees for political purposes and with conspiracy to obstruct the orderly operation of an act of Congress—a felony against the United States. When Judge Andrew Miller, of the federal district court for North Dakota, sustained a demurrer to the so-called "conspiracy indictment," the grand jury was called into session again on May 8. Two new indictments were returned charging materially the same offenses as the first two, but varying somewhat in language and legal content.

Trial of eight of the defendants[4] on the charge of conspiracy began in Bismarck on May 22. The government made no attempt to employ the indictment charging solicitation of funds. After deliberations which lasted for fifty-eight hours, the jury on June 17 returned a verdict of guilty in the cases of Langer and four of his associates.[5] The court delayed final judgment until June 29, two days after the primary elections had been held. At that time, Governor Langer was sentenced to serve eighteen months in the federal penitentiary and to pay a fine of $10,000.[6] Counsel

[2] A summary of the events leading up to Governor Langer's conviction in the federal court is to be found in the *Fargo Forum*, June 17, 1934.

[3] *Traill County Tribune* (Mayville, N. D.), April 19, 1934. The others indicted were Oscar E. Erickson, publisher of *The Leader;* Frank A. Vogel, state highway commissioner; Oscar J. Chaput, *The Leader* business manager; Harold McDonald, solicitor for *The Leader;* R. A. Kinzer, formerly executive secretary of the Federal Emergency Relief Administration in North Dakota; P. J. Yeater and G. A. Hample, highway department employees; and Joseph Kinzer, FERA auditor.

[4] Because of his illness, O. E. Erickson's trial was postponed. As yet no date has been set for his case.

[5] At the conclusion of the government's case, Judge Miller had ordered a directed verdict of not guilty against three of the defendants: Yeater, Hample, and Joseph Kinzer.

[6] Vogel, Chaput, and R. A. Kinzer were each sentenced to serve thirteen months in the federal penitentiary and to pay a fine of $3,000; McDonald was sentenced to serve four months in the Burleigh county jail.

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for all five defendants immediately served notice of appeal to the U. S. circuit court of appeals of the eighth district.[7]

On June 18, the day after the verdict was rendered, Lieutenant-Governor Ole H. Olson arrived in Bismarck and took the oath of office as governor of the state. The following day he demanded that Attorney-General P. O. Sathre institute quo warranto proceedings before the state supreme court to oust Langer from office. Sathre already had rendered an opinion at the request of Langer as to the latter's status as governor in which the attorney-general ruled that "we have no hesitancy in advising you that in our opinion no vacancy has been created in the office of governor by reason of the verdict rendered by the federal jury, and that therefore you are still the duly qualified governor of [the] state of North Dakota."[8] In conformity with this view, the attorney-general refused to take official action in introducing a petition to the supreme court asking for the removal of Governor Langer.

In a letter[9] to H. G. Fuller, counsel for Lieutenant-Governor Olson, Sathre stated that "the overwhelming weight of authority is to the effect that a verdict alone does not constitute a conviction, but that the court sitting in the case must, as a part of the conviction, pronounce its judgment thereon." He concluded the explanation of his refusal to institute proceedings by saying that "the question of whether or not the governor and his co-defendants are guilty of felony or a misdemeanor depends upon the sentence of the court. The federal court has considerable latitude in the matter of pronouncing [sentence] so that [if] the court, in pronouncing such sentence, keeps within the limits which would constitute a misdemeanor under the state statutes, then the logical conclusion would be that the governor has not committed an offense which, even if proved, would be sufficient to create a vacancy in his office."

After his failure to secure action through the attorney-general, Lieutenant-Governor Olson made a second attempt to secure the office of governor by requesting of the supreme court of the state that it either permit him to initiate an ouster action against Langer or direct the attorney-general to begin such proceedings. In reply, the supreme court stated that the application "should not be allowed at this time."[10]

After the federal court had pronounced sentence upon Governor Langer, the lieutenant-governor again instituted proceedings before the supreme court of the state to determine the right of Langer to continue

[7] Arguments in the appeal were heard in Kansas City on March 19. No decision had been announced at the time of this writing.

[8] *Grand Forks Herald*, June 19, 1934.

[9] *Fargo Forum*, June 22, 1934, prints the letter in full.

[10] *Ibid.*

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in office. After several delays,[11] the supreme court, on July 18, filed its judgment[12] stating that "by reason of the judgment and sentence passed in conformity with the verdict, said respondent then and there ceased to possess the qualifications of governor required by law and the exercise of the powers and performance of the duties of the office of governor at the time and by reason of the said conviction and judgment devolved [upon] the petitioner Ole H. Olson as the lieutenant-governor of the state of North Dakota under the constitution of this state."[13] Two months elapsed before the majority opinion, on September 19, finally was made public.[14] The dissenting opinion of Judge Moellring was not released until September 28.

One of the main contentions of the Langer attorneys had been that the constitution gives the legislature the sole power to impeach a governor, and that at the time when the hearing was being held before the supreme court the legislature already was preparing to assemble in special session, pursuant to a call of Governor Langer, for the stated purpose of investigating the charges against him. The court held that "this proceeding, however, is not a proceeding to remove. It is simply a proceeding to determine whether the conviction of the respondent for a felony in the United States court for the district of North Dakota places him under a disability as contemplated in section 72 of the constitution, so that the powers and duties of the office devolve upon the lieutenant-governor during the continuance of such disability."[15] The court further pointed out that the defense contention that the power to determine whether a governor shall continue in office is reposed solely in the legislative assembly is denied by section 81 of the constitution, which provides that the conviction of the governor in the courts for any of the acts specifically forbidden automatically terminates all his rights to hold office.

After settling the problem of jurisdiction, the court proceeded to define the meaning of the word "disability," the presence of which, under section 72 of the constitution, would result in the powers and duties of the governor devolving upon the lieutenant-governor. In this connection, it was held that since section 73 of the constitution requires the governor to be "a citizen of the United States, and a qualified elector of the state,"

[11] When the supreme court decided to hear the case, Judge A. M. Christianson disqualified himself to sit with the court, since he had been indirectly associated with Governor Langer as chairman of the state committee to handle federal relief funds. The court then called in George M. McKenna, judge of the third judicial district of North Dakota, to sit in his stead.

[12] The decision of the court was four to one, Judge George Moellring, who had been appointed by Langer to fill a vacancy, dissenting from the majority.

[13] *Fargo Forum*, July 19, 1934.

[14] State *ex rel.* Olson v. Langer, 256 N. W. 377.

[15] *Ibid.*, p. 381.

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"ceasing to possess the qualifications of an elector constitutes a disability and, upon this event happening, the powers of the office devolve upon the lieutenant-governor."[16]

Since section 127 of the constitution states that "no person . . . shall be qualified to vote at any election . . . [if] convicted of treason or felony unless restored to civil rights," the court continued with a determination of the meaning of the phrase "convicted of felony." After reviewing the statutes and definitions current at the time when the constitution was drawn up, they declared that "the framers of the constitution intended to deny the right of franchise to those who had been or thereafter might be convicted of a crime punishable by death or imprisonment in the penitentiary."[17] They also pointed out that the participation in the elective franchise is a privilege rather than a right, and that the state may deny such a privilege to persons convicted of crime. Such a denial is not a penalty, but is a consequence flowing from the acts charged and proved, of which judgment and conviction is conclusive evidence.

It next became necessary to answer the contention of the defense that, though a conviction of felony in the state courts results in disqualifying the defendant as an elector under section 127, nevertheless this is not true where a conviction is had in the federal courts. The court pointed out that, in view of article 6 of the federal constitution, and of section 3 of the constitution of North Dakota which provides that "the state of North Dakota is an inseparable part of the American union, and the constitution of the United States is the supreme law of the land," "it is only in a special and limited sense that the state and federal jurisdictions may be considered as foreign to each other. . . . It seems to us unthinkable, in view of the purpose underlying section 127 . . . and the interrelationship between the state and the United States, that an elector who has committed the most serious of offenses—for example, treason, or murder, or robbery—and who has been convicted therefor in the federal court, should not be disqualified to exercise the elective franchise in North Dakota where the offense was committed. Neither can the fact that the offense of which the respondent in the instant case was convicted may by some be considered as not a serious one make any difference in the application of the rule. The constitutional provision establishes a rule for all cases, and in its application the merits of any individual case cannot be considered."[18]

The defense next argued that even if a conviction of a felony in the federal court be within the contemplation of section 127, nevertheless such conviction must be for an offense also made a felony by the statute of the state; that under the statutes of North Dakota[19] the offense for

[16] *Ibid.*, p. 384.
[17] *Ibid.*
[18] *Ibid.*, p. 387.
[19] Section 9441 et seq., C. L. 1913.

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which Langer was convicted is only a misdemeanor, and, accordingly, there was no conviction of felony within the meaning of that term in section 127. In answer to this, the court said that "he who violates the statute must be held to know what he is doing when he does the prohibited act and to know the consequence in the way of penalty. His personal standard cannot be the measure of the character of the act or of its depravity. The standard set by the lawmaking body of that jurisdiction must do that. . . . Accordingly, he who sets himself above the law and does an act regarded by the United States as of so serious a nature as to be prohibited and penalized as a felony may well be held in this state to be unfit to participate in governmental affairs. . . . We therefore hold that . . . whether an offense for which conviction is had is a felony must be determined by the law of the jurisdiction where it is committed."[20]

The court then turned to the claim of the Langer counsel that conviction of a felony does not deprive one of his rights as an elector until such time as the judgment of conviction is finally affirmed on appeal and he is actually confined in the penitentiary. In answering this charge, the court again emphasized that the purpose underlying the constitutional disqualification is to protect the public. The social philosophy animating the court's decision is very clearly expressed in the opinion. "When a person is convicted of a felony, the presumption of guilt immediately attaches, and this presumption is not destroyed or abrogated by an appeal. It is against public policy and against the best interests of sound government that one convicted of a felony shall continue to exercise his right to the elective franchise and to enjoy the privileges and prerogatives of an elector. The rights of the public must be paramount to the rights of the individual. And the right of the individual to participate in government as an elector must give way to the public interest, so that the public may know that the purity of the ballot box is insured and thus have confidence in the honor and rectitude of its officials. It is true that this may work a hardship upon the individual, because it is possible his conviction may be reversed upon appeal and ultimately he may be found innocent; and therefore some may believe that in a sense he was wrongfully deprived of his enjoyment of the elective franchise and the privileges which go with it. But, on the other hand, his conviction may be affirmed (presumptively it will be), and we would have the anomalous situation of an individual holding the great office of governor of a state found by the jury to be guilty of a felony and sentenced to a federal penitentiary, yet continuing during the pendency of his appeal to be and to act as the chief executive of the state, intrusted with the enforcement of the constitution and the laws, as well as having the personal and private right to

[20] State *ex rel.* Olson v. Langer, 256 N. W. 377, 388.

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enjoy the rights, duties, privileges, honors, and emoluments of his great office. If an appeal allowed and permitted a citizen convicted of a felony to retain the rights and privileges of an elector, including the right to hold office during the interval of his appeal, the object of the statute and the constitution would, in most cases, be wholly defeated; because, as a matter of common knowledge, appeals take time. They sometimes occupy months or years, and hence a convicted elector would, if an officer, in most instances serve out his complete term and might even be reëlected during the pendency of his appeal, though judgment of conviction should be ultimately affirmed. Hence the public would have no redress, and its rights would be entirely overlooked and ignored."[21]

To uphold its stand on this question, the court pointed out that the clause of the constitution dealing with impeachment provides for the suspension of an officer immediately upon the completion of the impeachment proceedings in the house of representatives, pending trial upon such charges. Further, the laws dealing with removal of inferior officials by the governor allow the latter to suspend such an official, pending the hearing on the charges preferred against him. After citing a number of cases to substantiate its own position, and after analyzing and answering all those cases cited by the Langer counsel, the court definitely ruled that "when a defendant is convicted of a felony in this state, his disqualification as an elector attaches immediately, and that disqualification is not suspended by his appeal and the furnishing of a supersedeas bond."[22]

Finally, the court held that, contrary to the contention of the defense, its exercise of jurisdiction on quo warranto was not a denial to Governor Langer of his right of trial by jury for violation of state law, nor an abridgment of his privileges and immunities as a citizen of the United States, nor a deprivation of due process or equal protection of the laws, as guaranteed by the fifth and fourteenth amendments to the constitution of the United States.

During the months in which Governor Langer's actions and legal position were being challenged before the federal and state courts, the political pot in North Dakota had been boiling furiously. More than a month before the first indictments were returned by the federal grand jury, the Nonpartisan League had held its state convention in Valley City (on March 6) to draw up a slate of candidates for the Republican primaries in June. Violent opposition to Langer's policies had manifested itself within the League early in the administration, and as the delegates assembled at Valley City it was common knowledge that a struggle would ensue; for in many of the county conventions in which delegates to the state convention had been chosen the quarrels between the Langer and

[21] *Ibid.*, p. 389.

[22] *Ibid.*, p. 391.

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anti-Langer factions had been bitter. Shortly after the convention was called to order, John Nystul, chairman of the state executive committee, charged that the roll was packed with illegal delegates. After delivering a cutting criticism of the methods followed by Langer and announcing that the "real League convention" would meet at Jamestown on March 8, Nystul and his "committee of 100," as his followers were termed, walked out of the convention. Those who remained at Valley City proceeded to nominate Governor Langer by acclamation, while the bolting delegates, reassembling at Jamestown two days later, selected an entire anti-Langer ticket headed by T. H. H. Thoreson as candidate for governor. A three-cornered contest within the Republican party became a certainty when the Independent Republicans met at Devil's Lake and drew up a complete slate of candidates, with James P. Cain as candidate for the governorship.

The indictment and trial of Governor Langer injected an element of uncertainty into the pre-primary campaign. The attention of the voters was held by the events transpiring before the federal court at Bismarck rather than by the early attempts to awaken interest in the issues of the campaign. However, when the jury finally returned its verdict on June 17, the scene changed completely. In the nine days that remained before the close of the campaign, all three factions within the Republican party sent their best speakers out on the stump. The anti-Langerites, headed by Senator Gerald P. Nye, appealed for a thorough house-cleaning in the League. Langer speakers raised the cry of persecution and charged unfair conduct of the trial, particularly in the selection of the jury and the charges given to the jury by Judge Miller.[23] When the cyclonic campaign came to a close, the voters renominated Governor Langer by an overwhelming majority over his two opponents, who between them were able to secure less than 45 per cent of the total votes. At the same time, the Democrats chose as their candidate for governor Thomas H. Moodie, a newspaper publisher from Williston.

The smoke of the primary battles scarcely had cleared away before the political situation again was thrown into confusion as a result of the sentencing of Governor Langer by the federal court and the succeeding ouster action, as explained above. On the day following the verdict of the jury in the federal trial, Langer ordered the sheriff of Burleigh county to station deputies in the state capitol to guard the governor's office. At the same time he announced to the press: "I have no intention of giving up the office. We'll fight to the last, use force if necessary."[24] On the day of the primary election, Langer removed the guard from his office; but

[23] *Fargo Forum*, June 20, 1934.
[24] *Grand Forks Herald*, June 18, 1934.

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two days later, when the governor appeared in Fargo to receive sentence, the sheriff again received orders to station his men in the capitol.

On July 12, Governor Langer, in a further attempt to strengthen his position, issued a call for a special session of the legislature to convene on July 19. That the governor was hoping to prevent the supreme court from ousting him, and at the same time was confident that the legislature would whitewash his record, seems clear from a reading of the words of his call.[25]

When attorneys for Langer and Olson appeared before the supreme court the next day to present oral arguments in the ouster case, H. G. Fuller, counsel for the lieutenant-governor, urged the court to render its decision speedily, on the ground that Governor Langer planned the use of National Guard troops to maintain him as the de facto head of the state government, should he be held to be holding that office illegally. He argued to the court that if it delayed its judgment and the "judgment should favor the petitioner, that judgment would be only a scrap of paper if the legislature meets first. The purpose of the call is to set up a *de facto* government—to pass appropriations for the National Guard to maintain that government. If that happens, we can do nothing for the state."[26]

That Fuller's fears were well grounded seemed evident as soon as the supreme court, late on Tuesday afternoon, July 17, handed down its decision ousting Governor Langer from office. That same evening, Langer declared martial law over the entire state, and ordered out the National Guard in Bismarck. He gave as his reason for declaring martial law the possibility of threats to peace and order by federal relief workers in Bismarck who the day before had conducted demonstrations before the

[25] The call in part states: "The legislature of the state of North Dakota has the sole power to investigate any and all charges of corruption and unlawful conduct of any department of the state government and has the sole power to make a full and complete investigation into all charges against me as governor, and against any other department or officer of the state government, and to inquire fully into the charges made against me by the federal government, the character of the evidence produced, and the manner in which said trial was conducted, with the sole power to punish me by removal from office should said legislature deem that such charges and the evidence produced warrant said removal, and also has full power to require the full coöperation of all state officers in the administration of the affairs of state." *Fargo Forum*, July 13, 1934. The last clause quoted implied a threat against certain insurgent officials who had been opposing Langer for some time. Early in his administration, several officers who had been nominated and elected in 1932 as Nonpartisans bolted from Langer's leadership and refused to coöperate in his plans, particularly in reference to the creation of his machine. On July 1, State Treasurer Alfred S. Dale refused to pay salary checks to Governor Langer and Highway Commissioner Vogel on the ground that their conviction of a felony had made their status as state officials uncertain.

[26] *Fargo Forum*, July 14, 1934.

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state-house. Political opponents charged that Langer instigated the strike to serve as a basis for his declaration of martial law. Speaking before the workers on Monday night, the governor said: "I think you're doing the right thing in protesting in this manner. . . . I want to compliment the leaders of this movement. My judgment is the more hell you raise the sooner they'll come to understand the situation."[27]

The following day, July 18, Bismarck was in a state of turmoil. Ole Olson, declared acting-governor by the court, first issued a proclamation revoking Langer's call for a special session of the legislature, scheduled to convene July 19. He then ordered Adjutant-General Earle Sarles to vacate Langer's martial law edict, but at the same time to keep sufficient militiamen in service to maintain order. When the adjutant-general indicated that he would accept the decision of the court and recognize Olson as his commanding officer, the danger of violence seemed past. However, Langer remained in physical possession of the governor's office in the capitol building, and Olson made no move to force him to vacate.

On Thursday morning, July 19, Olson found the executive offices vacated, and moved in. That noon, the Langer faction of the legislature convened in extraordinary session, pursuant to Langer's call. Olson simply ignored the attempted session after he had posted on the doors of the legislative chambers a copy of his proclamation revoking Langer's special order. The house of representatives, with a bare majority of its members present, immediately adopted a concurrent resolution stating that "the legislative assembly . . . does hereby declare that it has convened . . . by its own act and of its own accord and pursuant to the powers that it does possess . . . not only pursuant to the call heretofore issued by William Langer as governor, but in and of its own right and in and through its own powers."[28] The senate, however, failed to muster a quorum and adjourned for the day without taking any action.[29] A vain attempt to complete the organization of both houses continued until Tuesday, July 24, when the members of the senate finally gave up their attempt to assemble a quorum. Consequently, the house also recessed to the call of the speaker, but not before they had adopted a resolution declaring that the house was legally in session to consider impeachment charges against state officers and had authorized the speaker to appoint a committee of fifteen to investigate charges against state officials. After a few days of activity, this committee, as had the "rump" legislature,

[27] *Ibid.*, July 18, 1934. [28] *Grand Forks Herald*, July 19, 1934.

[29] Although only 22 members, three short of a quorum, answered roll call in the senate Friday and Saturday, Langer appeared before a "joint session" Saturday to deliver his "message." The text of the Langer address is to be found in *Fargo Forum*, July 22, 1934.

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gradually disappeared from the scene and no more was heard of its activities.

The gubernatorial controversy thus ended, interest turned to the question of the general election in November. On August 1, the Republican state central committee chose Mrs. Lydia Langer, wife of the ousted governor, to head their ticket in the place of her husband.[30] Campaigning began immediately. William Langer spoke daily in behalf of the Republican ticket, centering much of his attack upon the members of the state supreme court who had declared him disqualified. The Democratic ticket, on the other hand, was vigorously supported by such staunch Nonpartisans as Acting-Governor Ole H. Olson, Senator Gerald P. Nye, and Congressman James Sinclair. At the election, Thomas H. Moodie, the Democratic candidate for governor, was given a comfortable majority over Mrs. Langer. The remainder of the state offices, however, went to the Republicans, although in several instances by very close margins.

The post-election political calm of North Dakota came to an abrupt termination on December 3, when an announcement came from the capitol that Francis Murphy, Langer's attorney, had been appointed a special assistant attorney-general for the express purpose of carrying on disqualification proceedings against Governor-elect Moodie.[31] Affidavits were produced purporting to show that Mr. Moodie had voted in Minneapolis, Minnesota, during his residence there in 1930.[32] His opponents argued that this made him ineligible for the office of governor, since the North Dakota constitution includes among the qualifications for the office that one "shall have resided five years next preceding the election within the state."[33]

District Judge Fred Jansonius of Bismarck immediately issued a temporary restraining order enjoining the canvassing board from issuing a certificate of election to Mr. Moodie.[34] The following day, the court modified the order to allow the canvassing board to certify the vote, but still restrained Secretary of State Robert Byrne from issuing a certificate of election.[35] After further study, Judge Jansonius ruled that the injunction should be vacated on the ground that "the eligibility to hold a public office can be questioned after election only in a direct proceeding brought for that purpose, to which the officer is a party."[36] The North

[30] *Ibid.*, August 2, 1934. [31] *Bismarck Tribune*, December 3, 1934.

[32] Although Mr. Moodie had resided in North Dakota a greater part of the time since his first arrival in the state in 1898, he occasionally had spent short periods pursuing his occupation as a journalist in other parts of the country. During the 20 months elapsing between the sale of his paper at Mohall, North Dakota, in August, 1929, and the purchase of a paper at Williston, North Dakota, in April, 1931, he was employed as an editorial writer on the staff of the *Minneapolis Tribune*.

[33] Art. 3, sect. 73. [34] *Bismarck Tribune*, December 3, 1934.

[35] *Ibid.*, December 4, 1934. [36] *Ibid.*, December 12, 1934.

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Dakota supreme court, on December 26, upheld the lower court in vacating the restraining order,[37] at the same time clearing the way for future action by holding that it could assume jurisdiction for the purpose of a declaratory judgment in a quo warranto proceeding against Moodie.

On Thursday, December 27, Attorney-General P. O. Sathre requested the supreme court to take immediate jurisdiction in a quo warranto action. Further complications became apparent when the attorney-general indicated that he was challenging the citizenship of the governor-elect as well as questioning his residence qualifications.[38] A week later, after the charge that Moodie was not a citizen had been withdrawn, the supreme court announced that it would assume jurisdiction in the disqualification proceedings, but first would require issues of fact to be tried by a district court.[39] Before agreement could be reached on the question of the county in which the jury trial should be held, January 7 arrived and Moodie took office as governor of the state.

The legislature met on January 8, with the organization of the house in the hands of the Nonpartisan members. A majority caucus agreed to stand solidly on a three-point program: no message to be delivered to the governor that the house was in session and ready to do business; no arrangements to be made for the traditional joint session with the senate at which messages from the outgoing and incoming governors are received and a formal inauguration held for the new chief executive and newly seated state officials; repeated adjournment of the house until the Moodie disqualification proceedings were determined by the courts.[40]

After the stalemate between the houses had continued for three days, with no apparent hope that the lower house would consent to the formal joint session, Acting-Governor Olson, the retiring chief executive, printed his message to the legislature in pamphlet form and had copies distributed to members of both houses, in lieu of the customary personal address. The following day, Governor Moodie sent his message to the two houses by messenger. Members of the senate consented to have it read by the chief clerk and ordered it printed in the journal, while the house ordered the message printed in the journal without a reading.

The second week of the legislative session opened with a bitter debate in the house preceding the passage of a resolution demanding that Governor Moodie file with the house proof of his citizenship.[41] Attorney-General Sathre previously had informed the house that proof of Moodie's

[37] *Ibid.*, December 26, 1934.
[38] *Ibid.*, December 28, 1934.
[39] *Ibid.*, January 2, 1935.
[40] *Fargo Forum*, January 9, 1935.
[41] *Ibid.*, January 15, 1935. Moodie at first refused to recognize the request, stating that the necessary proof was a matter of court record. On January 23, he provided the house with photostatic copies of naturalization papers and land records of his stepfather in proof of his own United States citizenship.

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citizenship satisfactory to the court already was on file in the records of the supreme court.

The opposition of the Nonpartisan-controlled house to Governor Moodie came to a sensational head on Friday, January 18, when a resolution for impeachment of the governor was passed by a narrow margin.[42]

Although rumors of such a move had been rife for weeks, the actual proposal took most observers by surprise. The resolution called for appointment by the speaker of a board of managers of five members of the house to prepare the specifications of impeachment and to present them to the bar of the senate.[43] Later that day, Attorney-General Sathre received the sharp criticism of house majority leaders when he blocked their plans to elevate Lieutenant-Governor Walter Welford to the executive office by ruling that impeachment was not complete until specific articles of impeachment drawn up by the board of managers had been approved by the house and presented to the bar of the senate.[44] Welford declared that he would abide by the attorney-general's opinion.

Impeachment proceedings were temporarily (and as subsequent events were to prove, permanently) halted by the majority house leaders the following Monday, January 21, when the supreme court announced that it was taking the Moodie disqualification case entirely into its own hands. This development resulted from a communication to the high court from Judge C. W. Buttz, judge of the district court, who had been assigned to preside over the jury trial on issues of fact, to the effect that due to radio addresses, press discussions, and legislative debate upon the status of Moodie, "there has developed such an intense feeling of dissension and turmoil as to render it difficult if not impossible to obtain a fair and impartial jury in any county of the state."[45] With attorneys in the disqualification action waiving jury trial, the supreme court agreed to hear the case on its merits, and set January 24 as the date. Opposing counsel

[42] *Ibid.*, January 18, 1935. On the last day of the legislative session, March 18, a motion was adopted unanimously by the house to expunge from the journal the impeachment resolution and all reference thereto.

[43] Specific charges were not mentioned in the impeachment resolution, but were left to be formulated by the committee of five. According to newspaper reports of the proceedings, "a charge of misdemeanor in office against Moodie is based on section 9302 of the penal code and although the impeachment resolution has been carefully shielded, it is understood that the charge is figured out in this fashion: It is alleged that when Moodie [voted] in Minneapolis, if he voted legally in that state, with knowledge of such, that he took office with the knowledge that he was not qualified. That if he did not vote legally in Minneapolis and knew it was not legal voting to do so, he committed a crime against the Minnesota statutes." *Fargo Forum*, January 18, 1935.

[44] *Ibid.*, January 19, 1935. Press reports indicated that former Governor Langer attempted to have impeachment proceedings started immediately against Sathre, but no definite action resulted.

[45] *Ibid.*, January 22, 1935.

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occupied three days in presenting arguments to the court, with Moodie the only witness to occupy the stand.

Late Saturday, February 2—just seven days after the conclusion of the hearing—the supreme court announced its decision and stated its opinion. By a unanimous ruling, the court held that Governor Moodie was lacking in proper qualifications for his office, and that Lieutenant-Governor Welford had succeeded to the position for the balance of the term. Within a few minutes after the arrival of the news of the final decision, Governor Moodie sent for Welford to turn the office over to him.

In its opinion,[46] the court reviewed in detail Governor Moodie's actions from the time he left North Dakota in August, 1929, to his return in April, 1931. The chief issue of fact centered around the question of whether Moodie could be considered to "have resided five years next preceding the election within the state" as required by section 73 of the constitution, in view of his having voted in Minneapolis at both the primary and general elections of 1930. Since there was no question about his physical actions during that period, "the question of fact is narrowed down to Mr. Moodie's intention."[47]

After a review of the legal authorities on the question, the court stated that "it is quite apparent from his record that while Mr. Moodie had an intention to return sometime to North Dakota, he had the intent when he registered as a voter in Minneapolis to cast his vote as he had always cast it, and that he did not intend to exercise any rights of citizenship in North Dakota while he was in Minnesota, but intended to exercise them in Minnesota. He knew that North Dakota had an absent-voter's ballot law; but he did not attempt to vote by absent ballot and did not in any way claim any benefit or any privilege of citizenship in North Dakota. . . . He violated no law and did no wrong; but his removing to Minneapolis and establishing a voting residence there deprived him of his legal residence in North Dakota during the time he was in Minneapolis, and it necessarily follows that he was not a resident of North Dakota for the five years next preceding the election in November, 1934, as required by section 73 of the constitution."[48]

The latter part of the opinion was concerned with the question of succession, and obviously was intended to rule in advance on any questions that might arise should former Governor Langer succeed in having his conviction set aside as a result of his appeal. Section 72 of the constitution states that "in case of . . . the disability of the governor, the powers and duties of the office for the residue of the term, or until . . . the disability shall be removed, shall devolve upon the lieutenant-governor."

[46] State *ex rel.* Sathre v. Moodie and Welford, 258 N. W. 558 published in full in *Fargo Forum*, February 3, 1935.

[47] *Ibid.*

[48] *Ibid.*

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The court stated that "the lack of residential qualifications on the part of the governor is a legal disability. The constitution does not differentiate between a disability existing before election and one occurring after election in regard to the right of the lieutenant-governor to assume the powers and duties of the office of governor."[49]

In disposing of the clause of section 71 of the constitution which provides that the governor shall hold office "until his successor is elected and duly qualified," the court declared that "the purpose of a hold-over provision is to conserve the public interests by preventing a vacancy in office. Such provision is not designed or intended to extend the tenure of office by an incumbent for his own benefit beyond the specified term. 23 *Am. and Eng. Encyc. of Law*, 2nd ed., p. 147. . . . If the governor-elect fails to qualify or is disqualified, the lieutenant-governor is the successor in office to the former governor or acting-governor. The election and qualification, of a governor or of a lieutenant-governor in event the governor-elect is disqualified, meets the requirement of section 71 that the governor serves until his successor is elected and duly qualified. In event of the disqualification of the governor-elect, the legal election and qualification of the lieutenant-governor supplies a successor and terminates the former administration."[50]

Finally, the court ruled that "though Mr. Moodie is not entitled to hold the office, nevertheless no question can be raised as to the validity of the official acts performed by him. Under the wise provision of the law, every act so done is valid and effective. . . . He is a de facto officer. As such, he was clothed with all the rights and powers that he would have enjoyed as a de jure officer possessed of every qualification."[51]

ROY L. MILLER.

State Teachers College,
Mayville, North Dakota.

State Constitutional Development Through Amendment, 1934. The rhythmic swing between reduced and increased constitutional amending activity among the states in successive years continues. In 1934, seventeen states are listed; in 1933, ten; in 1932, twenty-three; in 1931, six; in 1930, twenty-one; in 1929, five; in 1928, eighteen; and in 1927 (when this survey commenced), eight. As in 1933, about one-third of the states repealed prohibition provisions, and the same proportion concerned themselves with bond issues, salary reductions, consolidation of offices, increased debt limits, and other devices to combat depression. In Idaho, Louisiana, Maine, Montana, Oklahoma, West Virginia, and Wyoming, the amendments indicated below were adopted by two-thirds of each

[49] *Ibid.* [50] *Ibid.* [51] *Ibid.*

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house of the legislature and majority vote of the voters in the fall elections. Three-fifths of each house, with a majority of the popular vote, was required in Alabama, Maryland, Nebraska, and North Carolina. In Missouri, South Dakota, and Wisconsin, only a majority in the legislature was necessary to present amendments to the electorate, a majority of which sufficed for adoption. Nevada requires a majority in two successive sessions of the legislature and a majority of the popular vote. In South Carolina, the most obstacles are imposed: two-thirds of each house of the legislature to propose amendments for approval by a majority of the electorate, which must then be supplemented by a majority of each house of the succeeding legislature. The first state to depart from the traditional bicameral legislature is Nebraska, where a single house will convene on January 5 (the first Tuesday), 1937.[1] Pennsylvania is contemplating a thoroughgoing revision of its constitution this year, under the impetus of the first Democratic administration in fifty years; but Republican control of the upper house is offering resistance to the effort, supported by a considerable section of articulate opinion.

Alabama. The judge of probate, the tax assessor, the tax collector, and the clerk and register of the circuit court of Mobile county are removed from the restriction (Article XVI, section 280) that the salary, fees, or compensation of civil officers shall not be increased or diminished during their tenure.[2]

Idaho. Jury trial is provided for civil cases involving not more than five hundred dollars, three-fourths of the jury of twelve rendering a verdict, and in misdemeanor cases up to six dollars in which five of the six members of the jury may render a verdict. Trial by jury may be waived in all criminal cases other than felonies and in civil cases, in both instances by consent of the parties (Article 1, section 7).[3] Article VI is amended to provide non-partisan election of justices of the supreme court and district judges (Article VI).[4] The legislature is given full power to regulate the liquor traffic (Article III, section 26).[5] Both two- and four-year terms for county commissioner, rotated among election districts, replace the fixed two-year term (Article XVIII, section 10).[6]

Louisiana. Article VII, section 8, is changed to fix the terms of city judges, except in Baton Rouge, at six years, with salaries to be fixed by the legislature and paid by the parishes and cities.[7] Section 15 of Article VII is amended to require secret official ballots for elections and to authorize dispensing with general elections where only one candidate is

[1] See J. P. Senning, "Nebraska Provides for a One-House Legislature," in this REVIEW, Vol. 29, pp. 69–74 (Feb., 1935).

[2] Yes, 91,947; No. 12,533.

[3] Yes, 84,170; No. 35,783.

[4] Yes, 76,040; No. 37,856.

[5] Yes, 85,469; No. 53,788.

[6] Yes, 61,319; No, 53,257.

[7] Yes, 158,670; No. 26,590.

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nominated.[8] The poll tax is abolished and biennial registration is established (Article VIII, sections 2 and 3).[9] Homesteads to the value of two thousand dollars are exempt from taxation (Article X, section 4).[10]

For the general highway fund, and annual vehicle license tax, a gasoline fuel tax up to four cents per gallon, and five- and twenty-year bonds based upon a gasoline tax of one cent per gallon, are provided, the proceeds to be used exclusively for highways under the authority of the board of liquidation of state debt. A twenty-five year bond issue of sixty-eight million dollars is specially authorized for the construction of bridges, plus an additional seven million dollars for a particular bridge at New Orleans. The present four cents per gallon tax on gasoline is to be continued until all highway and bridge bonds are retired (Article X, section 4).[11] Article X, section 10, is amended to provide an additional tax of one-fifth mill for the zoölogical garden of New Orleans, as approved by the voters of the city. Special taxes for local improvement are restricted to a total of twenty-five mills, not more than five mills of which may be for any one purpose. This amendment is not retroactive.[12] A new paragraph is added to Article X, section 4, exempting motor vehicles from parish and special taxation except general or special taxes levied by municipalities or districts.[13] Parishes and municipalities are permitted to levy license taxes higher than those of the state on malt, vinous, distilled, alcoholic, spiritous, and intoxicating liquors (Article X, section 8).[14] Income taxes are relieved of the three per cent restriction of Article X, section 1.[15]

Funds for public schools (Article XII, section 14) are provided in parishes, by a tax of three mills ad valorem on one hundred per cent valuation, with a maximum of eight mills which shall be reduced one mill for each eight hundred thousand dollars of state support, which shall not be less than ten million dollars, to be apportioned among the parishes.[16] The state public school fund is derived from a tax of two and one-half mills ad valorem on the assessed valuation of all property subject to state taxation. In addition, a gasoline tax of one-half cent per gallon is imposed. State aid to local school funds is distributed on the principle that three-fourths shall be apportioned on the basis of "educable" children between the ages of six and eighteen years and one fourth on the basis of equalization among parishes to assure minimum education programs.[17] Outstanding debts are to be refunded at six per cent over forty years in order to reduce taxes (Article XIV, section 14, paragraph g).[18] Police juries of parishes and governing authorities of municipalities may

[8] Yes, 160,694; No. 25,193.
[9] Yes, 154,394; No. 31,719.
[10] Yes, 160,323; No. 26,925.
[11] Yes, 154,504; No. 32,766.
[12] Yes, 158,534; No. 26,786.
[13] Yes, 162,315; No. 24,572.
[14] Yes, 160,186; No. 25,216.
[15] Yes, 152,136; No. 35,201.
[16] Yes, 157,216; No. 28,834.
[17] Yes, 157,476; No. 28,160.

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readjust, refund, or extend outstanding revenue bonds for forty years at six per cent (amending Article XIV, section 14, paragraph e).[19] Pensions of sixty dollars a month for Confederate veterans and their widows are to be funded by a tax of three-fourths mill, in anticipation of which five per cent bonds may be issued (Article XVII, section 3).[20]

Maine. Article IX, section 14, is amended to restrict the total debt limit of the state to two million dollars, except for the building of highways and bridges, to suppress insurrections or repel invasion, to provide a bonus for state veterans of the World War, or to establish public wharves and other adequate port facilities. This amendment shall not be construed to refer to any money that has been or may be deposited in this state by the United States government, or to any fund which the state shall hold in trust for any Indian tribe.[21] Section 20 is added to Article IX to provide for a bond issue for the construction, improvement, and equipment of state buildings.[22] Amendment XXVI, prohibiting the manufacture and sale of intoxicating liquors, is repealed.[23]

Maryland. The debts of the city of Baltimore (Article XI, section 17) must be discharged within forty years, and money may be borrowed for emergency purposes to balance the city's budget or to meet any deficiency in the city treasury.[24]

Mississippi. Appropriation bills may not continue in force more than two years after the ending of the fiscal year next following a meeting of the regular biennial session (Section 64).[25] The fiscal year is changed to begin July 1 instead of October 1 (Section 115).[26] Qualified voters include all inhabitants twenty-one years of age or more, resident in the election district one year and in the state two years, who have paid poll taxes during those two years, unless they have committed some crime or are idiots, insane persons, or Indians not taxed. A minister of the gospel in charge of an organized church may vote after six months' residence in the district (Section 241).[27]

Missouri. The general assembly is authorized to extend the debt limit of the state not to exceed ten million dollars for the purpose of remodeling or repairing buildings and properties at any or all of the eleemosynary or penal institutions of the state (Article IV, section 44).[28] The city of St. Louis is authorized to elect its chief executive and legislature by general ticket or wards instead of only by general election as heretofore (Article IX, section 22).[29]

[18] Yes, 156,064; No. 28,452.
[19] Yes, 153,986; No, 29,452.
[20] Yes, 158,296; No, 27,761.
[21] Yes, 117,046; No, 91,515.
[22] Yes, 123,843; No, 79,906.
[23] Yes, 161,893; No, 85,363.
[24] Yes, 96,583; No, 57,385.
[25] Yes, 30,907; No, 16,636.
[26] Yes, 34,033; No, 15,017.
[27] Yes, 39,427; No, 13,113.
[28] Yes, 288,195; No, 166,607.
[29] Yes, 394,657; No, 381,736.

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Montana. Counties may consolidate or combine the duties of two or more of the offices of county clerk, sheriff, treasurer, superintendent of schools, surveyor, assessor, coroner, and public administrator, but no officer shall receive the salary of two or more officers (Article XVI, section 5).[30] To Article XII, section 1(a), is added authorization for a graduated progressive tax upon the incomes of persons, firms, and corporations, replacing property taxes, for public school purposes.[31]

Nebraska. Article III, section 1, amended to establish a unicameral legislature, commencing January 5, 1937, to consist of not less than thirty and not more than fifty members nominated and elected in a nonpartisan manner.[32] The prohibition section (Article XV, section 10) is repealed.[33]

Nevada. To Article IX, section 3, is added a section permitting the state to protect its property or natural resources through compact with other states or coöperation with the federal government, with appropriate taxes for carrying necessary contracts into effect.[34]

North Carolina. Insurance policies shall not be subject to the claims of creditors of the insured during the life of the insured, if the insurance is for the sole benefit of the wife or the children. This provision was added to Article X, section 7.[35]

Oklahoma. A provision (section 61) is added to Article V to enable the legislature to authorize cities to pension meritorious and disabled police.[36] The consent and approval of corporation commissions must be procured by public service corporations before consolidating with or leasing or purchasing parallel or competing lines. Article IX, section 8, required the supplementary consent of the legislature.[37]

South Carolina. Restrictions against special laws in section 34 of Article III are relaxed to permit the general assembly to fix the compensation of county officers and permit the payment of county fees into county treasuries,[38] the former restriction (sub-section 8) being repealed; and to permit the zoning of the state for the protection of game.[39] Magistrates to be given jurisdiction in civil cases where the value of the property in controversy does not exceed one hundred dollars (Article V, section 21).[40] The name of the railroad commission is changed to "public service commission" (Article IX, section 14).[41] Liability of bank stockholders to depositors is withdrawn (Article IX, section 18).[42] School dis-

[30] Yes, 60,828; No, 31,799.
[31] Yes, 106,010; No, 193,152.
[32] Yes, 286,086; No, 193,152.
[33] Yes, 328,074; No, 218,177.
[34] Yes, 23,966; No, 4,871.
[35] Yes, 304,885; No, 145,448.
[36] Yes, 302,618; No, 183,856.
[37] Yes, 254,625; No, 155,330.
[38] Yes, 10,910; No, 4,758.
[39] Yes, 10,998; No, 4,569.
[40] Yes, 6,117; No, 2,322.
[41] Yes, 10,826; No, 3,769.
[42] Yes, 9,103; No, 6,613.

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trict number 40, in the counties of Kersaw and Lancaster, is authorized to issue, for the election and equipment of a school building, additional bonds up to forty thousand dollars (Article X, section 5).[43]

South Dakota. Article XXIV, prohibiting the making of intoxicating liquors, is repealed.[44]

West Virginia. Article VI, section 46, prohibiting the sale and manufacture of intoxicating liquors, is repealed. The beginning of the term of office of state officials is changed from March 4 to the first Monday after the second Wednesday of January following their election. They are required to reside at the seat of government during their term of office, keeping at that place the public records, books, and papers pertaining to their respective offices (Article VII, section 1).[45] Taxes not to exceed one cent per hundred dollars may be levied upon franchises and incomes, amending Article X, section 1.[46]

Wisconsin. From Article III, section 1, "male" is deleted from the qualifications of electors.[47]

Wyoming. The prohibition of manufacture and sale of wine, beer, ale, etc., Article XIX, section 10, is repealed.[48]

WILSON LEON GODSHALL.

Dickinson Junior College.

Maine's Election Date. Periodically the cry, "As Maine goes, so goes the nation," attracts public attention to the fact that Maine, alone among the states, elects representatives to Congress in September instead of November. How this came to be is fairly well known. But why does Maine persist in her aloofness?

Section 3 of the act of February 2, 1872, for the apportionment of representatives to Congress among the several states, provided: "That the Tuesday next after the first Monday in November, in the year eighteen hundred and seventy-six, is hereby fixed and established as the day, in each of the States and Territories of the United States, for the election of Representatives and Delegates to the Forty-fifth Congress; and the Tuesday next after the first Monday in November, in every second year thereafter, is hereby fixed and established as the day for the election, in each of said States and Territories, of Representatives and Delegates to the Congress commencing on the fourth day of March next thereafter."[1]

On February 8, 1875, Representative Henry L. Dawes of Massachusetts submitted a resolution to the House declaring that it should be in

[43] Yes, 5,982; No, 2,493.
[44] Yes, 142,853; No, 108,648.
[45] Yes, 251,965; No, 145,787.
[46] Yes, 335,482; No, 43,931.
[47] Yes, 411,088; No, 166,745.
[48] Yes, 71,126; No, 22,404.
[1] 17 *Statutes at Large*, 28.

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order in committee of the whole pending consideration of an appropriation bill to consider an amendment for the modification, suspension, or repeal of the section of the statute regulating the time for holding elections of representatives. He said that conformity with the provisions of the statute would require the amendment of the constitutions of several states. The rules were suspended and the resolution was adopted.[2]

Accordingly, Representative Hale of Maine offered an additional section to the Sundry Civil Expenses Bill, changing the time of elections.[3] Section 6 of this law provided: "That section twenty-five of the Revised Statutes prescribing the time for holding elections for Representatives to Congress is hereby modified so as not to apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of the election of State officers in said State."[4]

Maine was one of the states to which reference was made. Article 2, section 4, of the Maine constitution of 1819 provided that "the election of governor, senators, and representatives shall be on the second Monday of September annually forever."[5] In the convention of 1819, an attempt was made to substitute October for September as the month in which the election should be held; but this was defeated. Two arguments against the change were presented. The first was that since the towns were to be classed for the purpose of choosing representatives, they would need more time to complete the election, in case an election were not made the first time. The second argument was that it had been the object of the committee in charge to set a day between the earlier and later harvest, as the least busy season, and they had decided on the second Monday of September as coming nearest that purpose.[6] A motion to strike out "second," and insert "third Monday" was likewise lost when it was pointed out that "the third Monday coming so near the equinox, the weather would not probably be so favorable."[7]

By article 23, which became a part of the constitution in 1880, the election of governor, senators, and representatives was made biennial, but the date of holding the election remained in September, as before.[8] Frequent proposals have been made to change the date of the election to November, to conform with the practice of the other states, but all have met with defeat. Lengthy debates on this question in the legislative

[2] *Congressional Record*, 43d Cong., 2d Sess., 1070. [3] *Ibid.*, 2016.

[4] 18 *Statutes at Large*, 400–401. Approved March 3, 1875.

[5] Thorpe (ed.), *Constitutions*, III, 1649.

[6] Jeremiah Perley, *Debates, Resolutions, and Other Proceedings of the Convention of Delegates . . . for the Purpose of Forming a Constitution for the State of Maine* (Portland, 1820), p. 98.

[7] *Ibid.*, pp. 98–99. [8] Thorpe (ed.), *Constitutions*, III, 1665.

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sessions of 1933[9] and 1935 throw considerable light on Maine's steadfast refusal to amend her constitution.

A resolve proposing an amendment to the constitution changing the date of the biennial elections was presented on January 11, 1933, by Representative Roy L. Fernald.[10] It was referred to the judiciary committee, which reported adversely on it.[11] Majority and minority reports were laid before the House on February 8. Mr. Fernald moved the acceptance of the minority report, favoring changing the date of the elections. In support of his motion, he presented a number of arguments. The first was that of economy. He asserted that the holding of one election instead of two in presidential years would result in a saving to Maine and to the towns of the state of nearly $50,000. In reply to the argument that it was to the advantage of the Republican party to have the state election in September rather than in November, Mr. Fernald pointed to the record which showed that since the Civil War, Maine had elected five Democratic governors in September,[12] yet during the same period the Republican party had never been the minority party in the November election.

Against the argument that the September election kept state and national issues separate, Mr. Fernald declared that this broke down in the face of the fact that in September members of the House of Representatives and Senate of the United States were elected together with state and county officials. He also pointed out that Maine was the only state out of harmony with the progressive idea of the "Lame Duck" Amendment of the national Constitution.

Mr. Fernald denied that holding elections in September advertised Maine. He argued that if advertising were desired, the $50,000 spent on the election could be used to better effect if spent directly on advertising. To the claims that it was more convenient for the people to vote in September than in November and that they preferred to do so, Mr. Fernald once more turned to the record. Admitting that before the days of automobiles and good roads these arguments had some validity, he denied that they longer held true. In the election of 1932, the total vote cast for president in November was nearly 300,000, as against 241,000 cast for governor in September. In 1928, the respective votes were 262,000 and 213,000. On the score of convenience, Mr. Fernald said that the proposed change ought to appeal to the farmers and people in the small towns because it would change the time of holding state conventions

[9] *Legislative Record of the Eighty-sixth Legislature of the State of Maine* (1933), pp. 168–181, 220–227. (Hereafter cited as *Legislative Record.*)

[10] *Ibid.*, p. 50.

[11] *Ibid.*, p. 137.

[12] The Democratic governor, Louis J. Brann, was reëlected in 1934, thus adding to the list.

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to late in July, after haying and when the country roads are in better shape. As matters stand, the larger centers of population have an advantage in representation in March state conventions. The change ought also to benefit the fishermen, who have less to do in November than in September.

Mr. Fernald reported that to a questionnaire sent to 500 selectmen and mayors of 500 Maine towns and cities, 264 replies were received, of which only eight opposed the measure. The selectmen and mayors of communities containing over half the population of the state favored it.

Mr. Fernald furthermore charged that the refusal to make the change in date was primarily political. The Democratic platform of 1932 was pledged to it, but Republican organization leaders had continued to oppose it. He derided the slogan "As Maine goes, so goes the nation," asserting that the September returns from Maine could not be taken seriously.[13]

Opponents of the proposal repeated claims which had been denied by Mr. Fernald. They asserted that there was no popular demand for a change; that September was the best month in the year for the election, both as to climate and as to road conditions; that money would not be saved; that the advertising value to the state was very great; that there was real merit in separating national and state elections.[14]

On a yea and nay vote in the house, the minority report made by Mr. Fernald to change the date of the biennial elections was accepted by a vote of 96 to 50.[15] When the measure came before the senate, one of the principal speeches in opposition to change was made by Harold E. Weeks. Characterizing himself as a lawyer and a conservative, he admitted that he was greatly influenced by the decision of the members of the constitutional convention who had set September as the best time for the election, as well as by the repeated defeats of similar proposals by the legislature. Repeating the arguments advanced in the house, he added to them by saying that money sent into the state to help swing the September election was to the financial advantage of Maine and more than offset the expense of the election to Maine taxpayers.[16] Other speakers followed without bringing up any new points, and on a vote the senate decided 22 to 8 in non-concurrence with the House.[17] The house, on motion of Mr. Fernald, voted to recede and concur with the senate;[18] and the proposal to change the date of elections was not presented to the people for their approval or rejection.

The proposal was again introduced in the session of 1935 by Mr. Fernald, now a member of the senate. On February 12, the committee on

[13] *Legislative Record*, pp. 168–171.
[14] *Ibid.*, pp. 171–180.
[15] *Ibid.*, pp. 180–181.
[16] *Ibid.*, pp. 220–223.
[17] *Ibid.*, p. 227.
[18] *Ibid.*, p. 245.

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judiciary, composed of seven members of the house and three senators, to whom the proposal had been referred, reported adversely on it by a vote of nine to one. On motion of Mr. Fernald, who alone signed the minority report, the bill and reports were laid upon the table pending acceptance of either report.[19]

On February 15, the senate voted to take from the table the report of the committee on judiciary. Mr. Fernald moved the acceptance of the minority report and in his speech in support of his motion advanced the same arguments which he had made two years previously in the house. In addition, he quoted the 1934 Maine Democratic platform which recommended the change of date on the ground that the two extra elections every four years involved "unnecessary expense in time and money to the candidates and added expense to the state."

Opponents of the motion once more denied that there was any popular demand for the proposal. Conservatism and tradition seemed to weigh heavily with them. On a yea and nay vote, the motion was lost, 15 to 11. Fifteen Republicans voted against the motion, while four Republicans and seven Democrats voted for it.[20] The majority report in opposition to the change was then accepted.

The action of the senate was sufficient to defeat the proposal; nevertheless, the question was taken up and debated in the house on February 21. Little that was new was added to what had been said in previous debates. Although the house in 1933 had approved the proposal for the change by a vote of 96 to 50, an adverse vote of 93 to 54 was now cast. All except two of the fifty Democrats voted for the measure, but it received the support of only four Republicans.[21] Once more, Maine refused to relinquish her unique position among the states of the Union.

EVERETT S. BROWN.

University of Michigan.

[19] *Daily Kennebec Journal*, February 13 (Stenographic report of the proceedings).

[20] *Ibid.*, February 16.

[21] *Ibid.*, February 22.

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Public Administration in the United States in 1934. In a recent article,[1] Dr. Gustav Stolper, the German economist and journalist, summarizing his impressions of present-day America, remarks that "America is sufficiently rich to set its 'American standard' as high as it wishes. It will always be attainable. Why not, since even at the lowest point of the crisis the average income of the employed American worker was twice to four times as high as that of his continental European comrade? But America, attacking the work of the great social reform, is facing at the same time a task that Europe solved long ago. In subjecting ever wider fields of social and economic life to governmental interference, the United States has first to create the essential governmental machinery. This technical task is difficult enough and not to be solved satisfactorily over night. The civil service, as England and Germany have created it, requires the work and tradition of several generations. The American has not yet the State, which he could entrust with the economic and social fate of the nation. Immeasurably many and great accomplishments have already been achieved over the years; nevertheless, only a beginning has been made. In order to proceed beyond these beginnings, the American has first to change his own attitude towards his State, to overcome his distrust of it. Whether he really wishes this, whether it is even a desirable aim, is not yet a foregone conclusion. But to the European observer this seems to be the central problem about which in the coming years all great and fundamental political decisions of America will turn, and on this problem minds will come to the parting of the ways. I, personally, do not believe that in any predictable time the tendency toward ever further extension of governmental interference in economic and social life can be checked. You may hail or deplore that—for the immediate future it is an irresistible process. And by the very nature of this process the government will be endowed with an ever-increasing power, and therefore an ever-increasing responsibility. The unspecified authority over four billion dollars that President Roosevelt asked in his budget message is only a symbolical expression of this. The credit of the nation is at the free disposal of the President to overcome unemployment by a last huge effort. Nobody can believe that the government which undertakes such a task and remains somewhat successful will be the same afterwards. As the War has transformed in the consciousness of all nations the relations between the individual and the community, so the experience in the gigantic struggle against the economic crisis will determine and form again this consciousness for decades to come."

The annual review of public administration which the present writers

[1] "Your United States," *Survey Graphic*, Feb., 1935, p. 60.

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published in these pages a year ago recorded, even if in the briefest form, some of the new functions that had been developed in the United States during the first year of the New Deal. While the flow of such developments somewhat slackened during 1934, it nevertheless continued. It will, therefore, be useful to survey first the new functions which have been added or old functions which have been reorganized in the national government especially, and then to review briefly developments in the state and local governments and among professional groups interested in public administration.

The United States in International Administration. On June 19, 1934, President Roosevelt gave his approval to Public Resolution No. 43 of the 73rd Congress whereby the United States accepted membership in the International Labor Organization. Section 2 of the resolution stated that "in accepting such membership the President shall assume on behalf of the United States no obligation under the Covenant of the League of Nations." Later in the year, formal entrance into the Organization was accepted.

Departments and Functions at Washington. Some important new functions of government were added during 1934, and some older functions were expanded or the administration of them reorganized. There was also a growing recognition of the importance of staff work and the exploration of problems of legislation and administration by special commissions or staffs.

Among the more important new departments are the Federal Housing Administration established under the National Housing Act (Public Act 479—73rd Congress). This agency administers a system of insurance on loans for home renovation and modernization which is the present version of the drive to stimulate the construction industry through the actions of individual householders. What is more important in the long run is the attack upon mortgage interest rates and construction financing generally through provision for a mutual mortgage insurance fund through which uniform practices may be adopted as well as policies leading generally to lower financing costs for construction. A measure that was more bitterly fought was Public Act 291 creating the Securities and Exchange Commission, composed of five members with five-year terms. The Securities Division of the Federal Trade Commission which had been given, by an act passed in 1933, supervision through registration of the issuance of securities sold in interstate or foreign commerce was transferred to the new Commission. In addition, it was given supervision over trading in such securities, with responsibilities relating to the exchanges. In general, it may be said that the Commission is given power chiefly to see that the information concerning securities offered for sale is a fair disclosure of the character of the security. The investor is left to

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exercise his own judgment of the security itself without any approval or disapproval of the merits of the security by the Commission. A third important administrative agency (established by Public Act 416) is the Federal Communications Commission, which has taken over responsibilities formerly vested in the Radio Commission and the Interstate Commerce Commission concerning the regulation of communication through broadcasting and by telephone, telegraph, and cable.

The effort to revive and develop foreign trade is reflected in several new administrative agencies established by executive order or by statute. By Executive Order 6651, issued on March 23, 1934, the President created the Office of Special Adviser to the President on Foreign Trade. The Adviser is responsible for reviewing data concerning this problem and for conducting negotiations with persons or groups seeking assistance from the government in the conduct of foreign trade. By Public Act 397, an Interdepartmental Foreign Trade Zones Board is authorized, with the function of making provision for such zones in the United States. The Trade Agreements Act of June 12 gave the Tariff Commission further duties in assisting the President in the negotiation of trade agreements in coöperation with the Department of State. Two banking corporations owned and operated by the government (largely through the State Department) have been created by executive order and incorporated in the District of Columbia. These are the Export-Import Bank of Washington (Executive Order 6581 of February 2, 1934), which was designed to finance exports to Russia, but which did not function during the year pending the conclusion of diplomatic negotiations with the USSR, and the Second Export-Import Bank of Washington (Executive Order 6638, March 9, 1934), designed primarily to finance purchases of silver by Cuba from the United States. The latter institution has extended its operations by financing export trade generally.

The most important change in the National Recovery Administration was the establishment of the National Industrial Recovery Board to replace the single Administrator. The effort to develop a labor policy based upon provisions of the National Industrial Recovery Act is reflected in the establishment of the National Labor Relations Board, authorized by Public Resolution 44 and Executive Order 6763 (June 29, 1934), a successor to the National Labor Board. Supplementary to this was the establishment of three special labor relations agencies—the National Mediation Board for disposing of disputes in the railroad industry, replacing the United States Board of Mediation; the Textile Labor Relations Board, established by Executive Order 6858 following the strike of September in that industry; and the National Steel Labor Relations Board established by Executive Order 6751 of June 28. The administration of a retirement system for railroad employees was entrusted to a Railroad Retirement Board by Public Act 485.

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Some minor developments under already existing agencies are the establishment of a Division of Territories and Island Possessions in the Department of Interior by Executive Order 6726 of May 29, 1934, whereby Hawaii, Alaska, and the Virgin Islands, which were administered by that Department, and Puerto Rico, administered by the War Department, were placed under the new Division; the establishment of a Federal Credit Union System under the Governor of the Farm Credit Administration, for the chartering and supervision of credit unions (Public Act 667); and the establishment of the Tennessee Valley Associated Coöperatives, Incorporated, a private corporation chartered in Tennessee by the directors of the TVA with the function of developing coöperative enterprises in the Tennessee Valley.

In last year's review of public administration, the problem of coordination and staff services generally was mentioned. Developments since that time include the merging by Executive Order 6889a of October 29, 1934, of the Executive Council, the Industrial Emergency Committee, and the National Emergency Council into a single agency for coördination, advice, and information under the title of National Emergency Council. The Executive Secretary was to be the chief coördinator of the activities of the various departments of the federal government, reporting directly to the President. A Consumers Division was established to encourage the formation of local consumers councils, and the U. S. Information Service was continued. The Central Statistical Board, whose chairman had served as economic adviser to the cabinet, continued its development of an interdepartmental coördination of statistical analysis and reporting. Other staff agencies that were established were the National Resources Board (Executive Order 6777) and the National Archives Establishment (Public Act 432). The first was created as a cabinet committee to which the three members of the preceding National Planning Board were added. These latter also serve as an advisory committee. At the close of the year, the board published several important reports, including those on land, water, and minerals. The report of the Mississippi Valley Commission should also be mentioned here. The work of this commission is being continued by the water resources section of the National Resources Board. The National Archives Establishment, headed by the National Archivist and an ex-officio council, gives us for the first time, with the new building nearing completion, a policy of protecting and preserving the papers and records of historical value, including motion-picture films and sound recordings of historical interest. A National Historical Publications Commission, ex-officio with two members appointed by the president of the American Historical Association from among its members, is authorized to develop a plan for the publication of source materials.

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Three important investigations were conducted by executive commissions. A National Power Policy Committee, inter-departmental in organization, with the Secretary of the Interior as chairman, was established for the study and coördination of policy regarding electrical power. The Committee on Economic Security was an emergency council committee created by Executive Order 6757, with an advisory council, a technical board, and advisory committees, and an executive director and staff for formulating legislation regarding social security. The Federal Aviation Commission was established by Public Act 308 to study and report on aviation policies, following the controversies over the air-mail contracts.

Among the more important developments in research and planning within the departments, one may include the redesigning of the budget, and research in taxation and finance conducted by the Treasury Department. Special attention was given in this latter study to administrative aspects of the problem, including the relations between the federal, state, and local tax systems.

The State and Local Governments. Developments at Washington naturally have continued to hold the center of attention. Three movements in state government, however, warrant special mention because of their possible influence in the future. Nebraska, by constitutional amendment, has authorized the establishment of a legislature of one chamber and of limited size. In Kansas, the Legislative Council during its first year undertook an extensive research program, aided by a grant from the Spelman Fund, and in its first report of December 8 placed a number of recommendations before the incoming legislature. Over forty states established planning boards under the stimulus of the National Planning Board and its successor, the National Resources Board. Regional consultants of the latter board work with the state boards, and a series of state planning reports has been the first result. It may be noted that two regional groupings of state planning boards have been established, in the Pacific Northwest and in New England.

Studies of county government were conducted in Connecticut, Illinois, Indiana, New York, California, and Ohio. County and city consolidation was authorized in the city of Jacksonville and Duval county, Florida, and, by an advisory referendum, was given approval in Milwaukee county and city. Twenty-four cities, including Toledo and Schenectady, and one county adopted the city-manager (or county-manager) plan. There were many developments in New York City, due to the energy and progress of the new administration there, including an extensive park program and a reorganization of the system of centralized purchase and storage. One of the most comprehensive of the studies now under way (conducted by the Institute of Public Administration) is that of Westchester county,

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in which are illustrated the problems and opportunities of a suburban district adjacent to a great metropolitan center.

During the course of the year, the financial position of many local governments was improved. This was due to programs of refunding debts, as well as to the institution of operating economies. The largest refunding operation in the history of American finance was that of Detroit, Michigan. Nearly $350,000,000 in outstanding bonds and short term notes were refunded. Other important refinancing projects included several Florida cities, Toledo, and the state of Arkansas. The Federal Municipal Bankruptcy Act became effective in June, but was relatively little used up to the first of the present year. About twenty local governments are reported to have filed bankruptcy petitions under the law, fourteen of them being drainage and other special districts.

Public Personnel. The year was marked by a general revival of interest in public personnel problems. One of the most significant contributions was made by the Commission of Inquiry on Public Service Personnel, to which reference was made in the annual review of last year. The report[2] of this Commission (published January 7, 1935) states the case for a career service in public employment, and suggests in broad outline the way in which a career service can be built.

Another indication of renewed interest in the civil service is found in the decision of the Boston convention of the National League of Women Voters to make the extension of the merit system one of the two main planks in the program of the organization for the years 1935 and 1936.

The reëstablishment of a headquarters office of the Civil Service Assembly at Chicago and the successful convention held by this Assembly after a lapse of two years indicate the renewal of activity on the part of the chief professional group in the field. Mr. G. Lyle Belsley, formerly personnel officer of the Farm Credit Administration, has accepted an appointment as director of the headquarters office.

At the November election, the people of California, by a vote of 1,216,141 to 382,609, approved an amendment to the state constitution extending and strengthening the merit system in the state service.

The year 1935 witnessed only one important extension of the merit system in the field of the federal government: the Farm Credit Administration was brought under the merit system by executive order of June 29, 1934. The New Deal agencies still remain outside the system, although informal contacts have been made between some of them and the Civil Service Commission. Through its Research Division, this Commission revised the efficiency rating system and the system of supervision.

[2] *Better Government Personnel* (New York, 1935), reviewed in this REVIEW, Apr., 1935, p. 296.

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For many years, there has been complaint on the part of college and university instructors on account of the lack of a general examination by means of which college-trained men and women could enter a general administrative career service without specialization. This problem was solved in 1934 by the United States Civil Service Commission, by calling a general college-level examination under the title of junior civil service examiner. This examination was taken by approximately 7,500 competitors, of whom 3,800 were successful.

Appointments are being made from this register to a wide variety of positions in a considerable number of departments and independent establishments. The register is available for any position where a college education is desired as a prerequisite to appointment at a salary level of approximately $1,620 per year.

During the last twelve months, there has been a substantial development of training for and within the public service. The Chicago group of official associations inaugurated an apprenticeship training for a selected number of men to be given leave from their positions in municipal government. The International City Managers' Association, with other groups, has launched an institute for public service training, carrying forward the correspondence work in a number of fields of municipal administration previously conducted at Syracuse University. The state leagues of municipalities have continued holding short training-schools for municipal employees and officials. The United States Civil Service Commission has started an experimental program of in-service training for its younger employees, and has given recognition to the desirability of acting as a general training center for personnel men for the federal service. The American University commenced a program of in-service training growing out of discussions in late 1934, starting with a broad course in the field of government statistics and another in public personnel management. The National Institution of Public Affairs commenced its program of preparatory interneships with between thirty and forty students brought to Washington from different parts of the country. The Census Bureau announced a course in statistics for its employees, and about five hundred indicated a desire to take the work. Among the universities, there has been a remarkable renewal of interest in training for the public service and the formal establishment of a number of definite training programs. Studies of university policy regarding training for the public service were under way at California, Chicago, Illinois, Minnesota, Wisconsin, and other institutions.

Professional Organizations. In the summer of 1934, a conference organized by the Public Administration Clearing House for discussing interchange of information in the field of public administration throughout the world was held in France. At this conference, plans for coördinating

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the work of the International Union of Local Authorities and the International Institute of the Administrative Sciences were initiated. The American members of the conference were Mr. Louis Brownlow, Professors Charles E. Merriam and Luther Gulick, and Mr. Guy Moffett. As a result of this conference and subsequent negotiations, a program is to be presented to joint plenary sessions of the two organizations in 1936, and in the meantime funds have been raised to maintain an American secretary to the joint committee which is charged with preparing the program. Mr. Rowland Egger, of the Bureau of Public Administration at the University of Virginia, has been selected for the post.

Mention has been made of the revival of the Civil Service Assembly, with a secretary and offices to be established during 1935 in Chicago. Other new professional organizations added to the Chicago group during the year are the American Society of Planning Officials, whose executive director is Mr. Walter H. Blucher; the Institute of Municipal Law Officials, whose executive director is Mr. Paul V. Betters; the National Association of Tax Assessing Officers, whose executive director is Mr. Carl Chatters; while the American Society of Municipal Engineers and the International Association of Public Works Officials, which have been in existence for many years, established a joint secretariat during 1934 with Mr. Donald C. Stone as executive director. During the year, the National Association of Housing Officials brought to the United States three European officials of long experience in housing administration and made their services available to public authorities and civic leaders for consultation and discussion in several cities. The tour was concluded with a meeting at Baltimore in October at which a "Housing Program for the United States" was formulated.

The annual award of the Governmental Research Association for the best piece of research completed by a member of the Association during the year 1934 was given to J. M. Leonard and Lent D. Upson for their report, "The Government of the Detroit Metropolitan Area."

Conclusion. During the rush of new developments and the confusion of political controversy existing throughout the year 1934, although with lessened tension compared with the preceding year, it was not easy to determine what were the important and what the trivial events and developments in public administration. Despite expressions of alarm over the granting of discretionary power to the administrator, the extension of this practice continued, as is evidenced by the conferment upon the President or upon administrative commissions of additional powers for negotiating tariff agreements and for regulating the issuance of securities. There was much evidence to support the view of Dr. Stolper quoted at the beginning of this article that the American has not overcome his distrust of the State; and in part this is due to the fact that he too often

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continues to prefer to use the State for purposes of spoils rather than of service. It will be interesting to see whether the report of the Commission of Inquiry on Public Service Personnel will help to raise the standard of public ideas concerning public personnel. Probably the efforts being made in the colleges and universities to study more seriously the possibilities of placing the graduates of these institutions in the public service will, in the long run, have an important influence on public attitudes. In the short run, the public attitude is undoubtedly greatly influenced by the action of large numbers of relatively inexperienced new legislators who have been swept into office in the last two elections, who have been unacquainted with the importance of impartial career public service to the success of a party program and effective legislation.

While some headway has been made in obtaining more effective general staff assistance in formulating and coördinating policy, a good deal remains to be done. The development of a staff attached to the National Emergency Council, and of the National Resources Board, may lead to providing the President with really serviceable administrative staff assistance. Not the least of the achievements of the National Resources Board is the fresh and attractive method of presenting its findings in its published reports. These are by far the most valuable examples of what public reporting might be that we have had in this country.

The administrative contribution to that vague movement entitled "planning" has been found chiefly in the area of natural resources, as evidenced by the work of the National Resources Board and the state planning boards which it has fostered, and in the effort to stimulate transportation policies to which the Federal Coördinator of Transportation has in part devoted his time and energy. While there have been hearings on proposed legislation affecting the administration of banking and currency, no major administrative developments took place during the year. There was continued development of, but no substantial change in, the program of coördination of national-state-local administration in many fields, including relief, public works, and land-use policies. The most important development in public housing policy was probably the opening of an attack upon the costs of financing housing construction through the provision of mortgage reinsurance arrangements.

There remain in the offing as a result of studies and investigations instituted during the year important programs of tax integration, control of munitions manufacture, social insurance, regulation of banking, participation by the state in the maintenance of healthier industrial relations, and development of natural resources.

Perhaps it is fair to say that after the first rush of new legislation and the creation of new administrative agencies, we are still bewildered and somewhat exhausted, but beginning to take up the problem of as-

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similating this new experience. To the student of public administration, the provision of adequate staff service to the political leaders whereby a well integrated general program may be developed, and, secondly, of a career service leading up to the political head of the department, continue to be the major objectives to be attained in this period of rapidly developing administrative policy.

JOHN M. GAUS, *University of Wisconsin.*
LEONARD D. WHITE, *U. S. Civil Service Commission.*

Comparative Civil Service Statistics: Germany. "Almost no other art requires such high moral qualifications as statistical comparison."[1] Dr. Arnold Brecht, then *Ministerialdirektor* in Prussia's state administration, thus prefaced, about three years ago, his Carnegie lecture at the Berlin Hochschule für Politik in which he cautiously analyzed public expenditures in the United States, England, France, and Germany. And he added: "The international comparison of public expenditures should serve only one end—the contest of all countries for the most constructive and lowest expenditures."[2]

It is a truism that public interest in present-day government centers around the pressing problem of how to achieve an administrative system conducive to the "most constructive and lowest expenditures." Curiously enough, however, there is as yet an appalling lack of definitely established standards which may be used as yard-sticks for determining what are "constructive" or relatively "low" expenditures. As a matter of fact, even the preliminary steps toward assembling reliable data on fiscal outlay on a nation-wide scale are of comparatively recent date. The German *Reichsfinanzstatistik*, for instance, which records in elaborate detail all expenditures of the Reich, the states, and local authorities, was built up with tremendous efforts just a few years ago.[3]

Obviously, when we try to scrutinize sets of figures for different countries, the grand totals of budgets and accounts do not mean anything unless they are conditioned upon a number of other factors which have an immediate bearing on them, such as population, climate, stage of civilization, general economic conditions (unemployment, subsidies to industry), public debt ("baby bonds," if widely distributed, minimize the necessity of social insurance), the real purchasing power of the currency, and the political structure (federal government, unitary state). Moreover, it is imperative to ascertain the actual expenditures of *all* public bodies

[1] Arnold Brecht, *Internationaler Vergleich der öffentlichen Ausgaben. Grundfragen der Internationalen Politik*, No. 2 (Leipzig and Berlin, 1932), p. 5.

[2] *Ibid.*

[3] Cf. *Verordnung über Finanzstatistik* of June 23, 1928 (*Reichsgesetzblatt*, I, p. 205).

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in each country, including local authorities and other corporate entities; for the division of functions between central and local governments differs from country to country,[4] and essential services may in one country be provided by the state while in another they are administered by separate corporate bodies created *ad hoc*.[5] Finally, attention must be paid to what Brecht has termed the "law of progressive parallelism between expenditures and density of population."[6] Thus, with an average per capita outlay of *RM* 299 in Reich, states, and local authorities (1928), the state of Hamburg, where 94 per cent of the population live in the metropolis, topped the actual range of averages (*RM* 322); while the state of Lippe, where no city can boast of 20,000 inhabitants, and where almost 60 per cent of the population live in towns of less than 2,000 inhabitants, represented the lowest average (*RM* 102).

But even with these important qualifications, we have not yet arrived at a fully reliable basis of computation. In order to evaluate expenditures, account must be taken also of efficiency standards as expressed by the relation between how adequately administrative tasks are discharged and the corresponding figures on public personnel. Here we encounter another difficulty, for comparative civil service statistics are still in a stage of tentative experimentation. This fact is well illustrated by the tabulations which we owe Herman Finer's patient researches. In his treatise, *Theory and Practice of Modern Government*,[7] Finer has brought together a number of figures indicative of the growth of the public service in Great Britain, France, Prussia, Germany, and the United States for the period between 1821 and 1929,[8] and has supplemented this picture through a functional analysis of the then most recent figures for the same countries.[9] The reader is, however, warned not to accept the figures as final. "In spite of the greatest care," the author advises him, "and the use of the best sources, these figures are only approximate; it is highly dangerous to compare those for each country in different years (since census methods and scope have varied), and even more dangerous to compare the figures for different countries, since here even the definition of civil service varies." "The task has been exceedingly difficult, and there are errors and uncertainties."[10]

[4] For example, England has recently "nationalized" her unemployment relief system (Unemployment Insurance Act of 1934). Cf. Fritz Morstein Marx, "Whither Local Self-Government?," *Public Management*, Vol. 16, pp. 131 ff. (1934). In Germany, unemployment relief proper remains a function of local government.

[5] For example, in Germany the *Träger* of social insurance (health, old age, invalidity, unemployment) are such separate corporate bodies created *ad hoc*, and therefore not part of the national administrative structure.

[6] Brecht, *op. cit.*, p. 6. Throughout his analysis, Brecht has attempted to verify this "law."

[7] London, 1932.

[8] Finer, *op. cit.*, Vol. 2, p. 1167.

[9] *Ibid.*, p. 1182.

[10] *Ibid.*, p. 1167, note 1.

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How well Finer's admonitions are justified becomes patent on closer examination of his own tabulations. His "most recent figures" show France in the lead (1926: 1,464,500) and the United States far in the rear (June 30, 1929: 587,665); while Great Britain occupies the second place (1929: 1,417,432) and Germany the third (1928: 1,187,925). All figures are, as one might expect, "unqualified." For the United States, for instance, only the federal civil service is taken into consideration.[11] France's grand total, on the other hand, includes not less than 590,000 *fonctionnaires* of the state railway service. The figure for Germany is based on the results of the administrative personnel census for March 31, 1928.[12] Finer splits it up into the three main jurisdictions (Reich, states, and local government) and, within each jurisdiction, into three professional groups which he calls "civil servants," "permanent salaried," and "industrial." He thus arrives at the following subdivision:

Groups	*Reich*	*States*	*Local*
Civil servants	96,681	335,574	329,717
Permanent salaried	26,303	47,209	100,784
Industrial	50,193	34,969	166,495
Total	173,177	417,752	596,996

Before we inquire into the significance of this array, three minor points may be emphasized. First, in the official German prototype, the group which Finer has labeled "permanent salaried" is classified as "employees for lasting administrative purposes," the group here termed "industrial" as "workers [labor] for lasting administrative purposes." Both groups represent persons in public employment who are *not* civil servants in the terminology of the civil service law; their professional status is determined either through individual private contract or through collective labor agreements. Second, Finer has included the figures for the three city-states (Hamburg, Bremen, and Lübeck) under the column "Local," although the public personnel of the "Free and Hanseatic Cities," apart from a small fraction, are technically in state employment (1928: 27,317 civil servants, 13,736 "permanent salaried," and 18,350 "industrial"). Third, the census of 1928 does not embrace, except for the elementary school teachers, the personnel of local governmental units with less than 5,000 inhabitants, which amounts to about 40,000 persons.[13] In other words, if we confine ourselves to civil servants proper, Germany's grand total would be, according to the census of 1928, somewhere around 785,000.

In Finer's tabulation, the postal service in Great Britain, France, and

[11] Moreover, the increase in the federal civil service for the following fiscal year alone amounted to 21,250. Cf. *Forty-seventh Annual Report of the U. S. Civil Service Commission for the Fiscal Year ended June 30, 1930*, p. 4.

[12] *Wirtschaft und Statistik*, Vol. 10, pp. 650 ff. (1930).

[13] *Ibid.*, p. 650.

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the United States ranks among the largest single items; it is not listed, however, under "Germany." Is it possible that it is hiding in the Reich's civil service total of 96,681? It is not. What about the Reich railway service? What about social insurance authorities, and utilities in public ownership? Strange as it may seem, all of these agencies of government are not covered by the administrative personnel census of 1928. The census does not extend beyond the *executive* division (including education) as contrasted to *Betriebsverwaltung*. Under the Post Finance Act of March 18, 1924,[14] the postal, telegraph, and telephone administration is an "independent enterprise,"[15] although its officials have not ceased to be "national civil servants."[16] Similarly, the national railway system is administered, according to the *Reichsbahngesetz*[17] passed as a result of the London Conference of 1924, by a separate corporate body; its officials are no longer *national* civil servants, but their professional status has not materially changed.[18] These and other manifestations of the modern "service state"[19] do not belong to the realm of *Hoheitsverwaltung* to which the census of 1928 was restricted.

Finer's figures on Germany, then, have little comparative value. Of somewhat greater use is the computation of the *Statistisches Reichsamt* for 1925, resting on the occupational census for June 16, 1925, "other available data and partly on estimates,"[20] and comprehending only civil servants proper:[21]

Units of Government	*Hoheitsverwaltung*	*Betriebsverwaltung*, etc.
Reich	97,000	
Postal, etc., administration		252,000
Railway administration		330,000
States and local authorities	675,000[22]	100,000
Other corporate bodies (social insurance, church, etc.)		70,000
Total	772,000	752,000

The grand total thus amounts to 1,524,000 civil servants in Germany. The figure does not embrace, however, those two groups of public personnel which Finer calls "permanent salaried" and "industrial." While in the *Hoheitsverwaltung* these groups amount to slightly more than one-third of all persons in public employment, their share is, on the average, about fifty per cent in the *Betriebsverwaltung*, including "other corporate bodies."[23] That means that we have to add about 1,150,000 persons in

[14] *Reichsgesetzblatt*, I, p. 287. [15] Sec. 1 of the Post Finance Act.
[16] Sec. 12 (I). [17] Act of August 30, 1924 (*Reichsgesetzblatt*, II, p. 272).
[18] *Reichsbahn-Personalgesetz* of August 30, 1924 (*ibid.*, p. 287).
[19] Leonard D. White, *Trends in Public Administration* (New York and London, 1933), p. 341. [20] *Statistik des Deutschen Reichs*, Vol. 408 (1931), p. 87.
[21] *Ibid.*, p. 87. [22] Including teachers and uniformed policemen.
[23] *Wirtschaft und Statistik*, Vol. 13, pp. 245–246 (1933).

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public employment, which brings the original grand total up to about 2,675,000.

By March 31, 1930, this number had increased to 2,785,000.[24] The increase, however, left the *Hoheitsverwaltung* unaffected. In fact, there was some retrenchment in the *Hoheitsverwaltung* as demonstrated by the following figures[25] arranged in accordance with Finer's subdivision for March 31, 1928:

Groups	*Reich*	*States*	*Local*
Civil servants	95,585	332,212	342,203
Permanent salaried	26,400	49,720	109,941
Industrial	40,379	38,008	172,520
Total	162,364	419,940	624,664

The grand total is 1,206,968, which, in contrast with the grand total for March 31, 1928, includes the administrative personnel of local governmental units with less than 5,000 inhabitants (about 40,000). If we compare these figures with those for 1928, it appears that the retrenchment is confined to the national and to the local jurisdictions, while there is a slight growth in the states. Within the three professional groups, we observe a certain shift from civil servants to "permanent salaried" and "industrial," which has continued since 1930.[26] The occupational census for June 16, 1933, which records a total employment figure of 32.3 million persons (including independent business men, farmers, and their employed dependents) shows a decrease of civil servants from 1,524,000 (1925) to 1,398,000,[27] of whom 131,000 are women, particularly teachers.[28] The decrease may be due partly to the Civil Service Restoration Act of April 7, 1933,[29] by which the Third Reich has attempted to purify the German public service from "undesirable elements" whose positions were later occupied by "reliable" aspirants. Even then, however, the report of the *Statistisches Reichsamt* is in all probability correct, namely, that the number of civil servants in the technical meaning has been reduced about 100,000 since the occupational census of 1925 was taken.[30]

This brief investigation into German civil service statistics warrants no sweeping conclusions. But it demonstrates that there are as yet too few "qualified" data to make the international comparison of public service figures a worth-while undertaking.

FRITZ MORSTEIN MARX.

Princeton University.

[24] *Ibid.*, p. 246. [25] *Ibid.*, p. 245.

[26] The personnel policy of the Third Reich will probably accentuate this trend. Cf. Carl Heyland, "Reichsgesetz zur Änderung von Vorschriften auf dem Gebiete des allgemeinen Beamten-, des Besoldungs-, und des Versorgungsrechts vom 30 Juni 1933," *Juristische Wochenschrift*, Vol. 62, pp. 1977 ff. (1933).

[27] *Wirtschaft und Statistik*, Vol. 14, p. 442 (1934). [28] *Ibid.*, p. 442.

[29] Cf. Fritz Morstein Marx, "German Bureaucracy in Transition," in this REVIEW, Vol. 28, pp. 467 ff. (1934).

[30] *Wirtschaft und Statistik*, Vol. 14, p. 444 (1934).

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JUDICIAL AFFAIRS

EDITED BY WALTER F. DODD

Chicago, Illinois

The Work of Judicial Councils. It may safely be assumed that there is a real and generally recognized need for improvement in the administration of justice in the United States. Perhaps the thought that comes to the mind of a majority of persons when the improvement of a governmental function or agency is suggested is that there "ought to be a law" enacted or changed. And it is true that many legal enactments or changes will probably be necessary as a basis for improving the administration of justice. On the other hand, it may be possible to bring about considerable improvement in some states through changes in rules by courts themselves, or through other methods.

If one assumes that changes should be made through legislative and judicial action, one cannot be sure that those in authority are in a position to take intelligent action, or that they will be inclined to act. Such a step is one that requires much study and deliberation. This study and deliberation the legislatures and courts may not have the time, facilities, and inclination to give.

Under our American system of state government, the legislature is charged generally with the task of authorizing or instituting changes in policy. Are our legislatures, as presently composed, in a position to cope with this task? Upon the basis of data from state blue-books, legislative manuals, and constitutions, it may be estimated that the "turn-over" in state legislatures is around 50 per cent for each term. Salaries paid state legislators are not such as to attract and hold the best types of men. In few states can a legislator expect more than an average of $500 a year for his services.[1] Under these circumstances, it may safely be concluded that in state legislatures there are few who can be considered professional lawmakers. A member of a state legislature does not, as a rule, become an expert in any particular phase of legislation.[2] No considerable number of such persons can be expected to take upon themselves the responsibility of urging extensive changes in a field in which tradition and custom are so deeply intrenched as is the case in the field of law and its administration. Under such circumstances, it may reasonably be concluded that the initial urge for changes in judicial organization and administration must come from some source outside of legislative halls.

[1] The range in salary is from $200 for a two-year period in New Hampshire to $2,500 a year in New York; or from $3 a day for each session in Oregon to $15 a day in Arizona.

[2] For an analysis of the membership of a state legislature (in Kentucky), see J. C. Jones, "The Make-up of a State Legislature," in this REVIEW, Vol. 25, pp. 116–119 (Feb., 1931).

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During the last two decades, much has been done in the United States relative to the investigation of crime conditions and judicial administration. To mention only one type of such investigations, there have been several more or less extensive crime surveys in certain states and cities, for example, the Missouri Crime Survey, the Cleveland Crime Survey, the Illinois Crime Survey, the New York Crime Studies, and the extensive studies of the National Crime Commission, commonly called the Wickersham Commission. However, such studies have been somewhat expensive and often limited in scope. The Missouri Crime Survey, which was begun on April 1, 1925, and completed early in 1926, cost approximately $75,000. Yet it dealt with only one county in each of the thirty-eight judicial circuits of the state. The Illinois survey extended from February, 1926, to 1929, at a cost of about $100,000. It was concerned primarily with only twenty-two counties (including Cook county and Chicago) in Illinois and the city of Milwaukee, Wisconsin, for purposes of comparison.[3] The New York Crime Commission started its investigations in 1926 with an appropriation of $100,000. Additional appropriations were granted until by 1930 the outlay reached $300,000. Another commission was created in 1931. It reported to the legislature on January 25, 1934.[4] The Cleveland survey, extending from February until June, 1921, and confined to that city, cost $38,000.

It is not the purpose here to disparage the results of such surveys. They bring to light much valuable, and often startling, information. However, it is the writer's belief that it is unnecessary to resort to these fact-finding surveys as a permanent policy. There is now in many states a tried and proved public organ, designed to secure reliable and comprehensive information and to make recommendations for, or take actual steps toward, reforms. This organ is the judicial council.

Judicial councils have been created in one-half of the states, the first being established in Wisconsin in 1913.[5] No attempt will be made here to study the work of all of the councils, or all of the work of any one council. Other writers have covered this in a general way.[6] The purpose

[3] For a brief statement concerning the work of the Illinois, Missouri, and Cleveland surveys, see "Report of the Special Crime Commission," 19 *Massachusetts Law Quarterly* 7.

[4] *Journal of the American Judicature Society*, Vol. 17, p. 172 (April, 1934).

[5] *Wisconsin Laws*, 1913, p. 691. The body was not, and is not, termed a judicial council in the statutes, but rather the Wisconsin board of circuit judges. A council was created in Ohio in 1923. *Laws of Ohio*, 1923, pp. 364–365.

[6] Perhaps the best single study of the judicial council movement is a book, *The Judicial Council*, prepared by the committee on judicial administration of the Merchants' Association of New York and published in 1932. In his *Principles of Judicial Administration*, pp. 264–280, Dr. W. F. Willoughby presents a lucid discussion of the establishment and work of the councils in several states. *The Journal of the American Judicature Society* presents up to date information relative to the

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here is merely to present certain facts relative to the organization and work of the councils in a few states in an attempt to show that the judicial council is, or can be, a well qualified, economically operating agency capable of contributing toward the improvement of the law and its administration.

With reference to the composition of the councils, those in the following states may be taken as fairly typical: (1) California, eleven members made up of designated members of each of five state courts;[7] (2) Connecticut, nine members consisting of four judges from as many state courts, four attorneys (private), and one state's attorney;[8] (3) Kansas, nine members consisting of three judges from as many state courts, four attorneys, and the two chairmen of the legislative judiciary committees;[9] (4) Michigan, ten members, three judges from as many courts, three private practitioners, two laymen, the attorney-general of the state, and a member of the state university law school faculty;[10] and (5) Texas, sixteen members, as follows: five judges from three state courts, three laymen, the two chairmen of the legislative judicary committees, the attorney-general of the state, and one member of the state university law school faculty.[11] The members of a judicial council, if not *ex-officio*, are usually chosen, or designated, by the governor, the chief justice of the state's highest court, or the president or governing board of the state's bar association, or by a combination of two or all of these methods.

Councils are usually established by a legislative enactment, although the California council was created through a constitutional amendment,[12] and in Idaho,[13] South Dakota,[14] Utah,[15] and Oklahoma[16] they are creations of the respective state bar associations, with or without express legislative authorization.

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establishment and progress of councils. See also Charles H. Paul, "The Judicial Councils and Reform of Judicial Procedure," 5 *Oregon Law Review* 1 (1925); Albert B. Ridgway, "The American Judicial Council; Its Powers and Possibilities," *ibid.*, 292; James W. McClendon, "A Review of the Judicial Council Movement," 9 *Texas Law Review* 266; Edson R. Sunderland, "Organization and Function of the Judicial Councils," 9 *Indiana Law Journal* 479 (May, 1934); Henry B. Cabot, Jr. "Results of the Creation of the Judicial Council of Massachusetts," 18 *Massachusetts Law Quarterly* 49 (Feb., 1933).

[7] *Constitution of California*, Art. VI, Sec. 1a (amendment).

[8] *Connecticut General Statutes*, 1930, Sec. 5362.

[9] *Laws of Kansas*, 1927, 243–244.

[10] *Public Acts of Michigan*, 1929, 106.

[11] *Texas Laws*, 1929, 689–691 (Regular session).

[12] See *supra*, note 7.

[13] 5 *Proceedings of Idaho State Bar* 101 (1929).

[14] 2 *South Dakota Bar Journal* 39 (Oct., 1933).

[15] *Utah Bar Bulletin*, October, 1931, 13.

[16] 17 *Journal of the American Judicature Society* 167 (April, 1934).

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According to Professor Sunderland, "there are two responsibilities which appear to be placed upon the judicial council. The first is express, the second is implied. The first is a very definite responsibility for formulating and presenting to the proper authorities suitable measures for procedural reform. The second is a very indefinite responsibility for promoting and facilitating the adoption of the measures proposed."[17] To these two responsibilities one might add a third, i.e., that of expediting the business of the courts through the formulation of rules and the supervision of the courts. It is true that this third responsibility is not usually conferred upon councils; but the council in California has such a responsibility, as is seen from the statements in the second paragraph below.

Most judicial councils are what are called "weak" councils—that is, they have advisory powers only. The Massachusetts council exemplifies this type. It is empowered to make a "continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts." The council is required to "report annually on or before December first to the governor upon the work of the various branches of the judicial system." It "may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."[18]

The judicial council of California illustrates the strong type. Besides advisory functions similar to those possessed by the Massachusetts council, it may "adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force; and the council shall submit to the legislature, at each regular session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure." In addition, it is provided that "the chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred." The constitution directs that "the several judges shall coöperate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting

[17] Edson R. Sunderland, "Organization and Function of Judicial Councils," 9 *Indiana Law Journal* 479 (May, 1934).

[18] *Acts and Resolves of Massachusetts*, 1924, 228.

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the condition, and manner of disposal, of judicial business in their respective courts."[19]

It appears, however, that most of the work of a majority of the councils consists of conducting surveys, assembling information, and recommending proposed changes in organization and procedure of the various courts of the respective states. Attention will now be turned to some of the results obtained in certain states through recommendations of judicial councils.

In the first eight years of the judicial council's existence in Massachusetts, 85 statutory changes (or new enactments) were recommended and 43 were enacted. During the same time, special investigations and reports were made at the request of the legislature or governor upon 33 different subjects—usually accompanied by draft acts.[20] In its first four biennial reports, the California judicial council recommended 68 statutory changes. Of these, 39 were enacted into law.[21] The first six annual reports of the council in Rhode Island show 17 bills recommended, with 13 enacted;[22] in New Jersey, four annual reports, 47 bills recommended, and 20 enacted;[23] in Texas, four annual reports, 25 bills recommended, and 15 enacted;[24] in Connecticut, two biennial reports, 56 bills proposed, and 8 enacted.[25] Summarizing the number for these six states, there were 298 proposed legal changes and 138 enactments.

It is true that many of the bills recommended and passed were very simple—almost trivial—in nature, yet every one of them had some characteristic or feature which indicated that it would lead, even if in a small degree, toward improvement in the administration of justice in the state affected. It is believed that it would be possible to take up the enactments singly and show some actual and beneficial effect of each. Space does not permit of such a procedure, but a sampling method will be used to show the results obtained from laws enacted, upon council recommendation, in certain states, as well as the possible effect of certain recommendations not yet favorably acted upon.

In its first report, the council in Massachusetts recommended a law

[19] See *supra*, note 7. No other judicial council has administrative powers comparable to those possessed by the California council, but the councils in Washington, Kansas, Connecticut, and Oklahoma have important rule-making powers. The recently created judicial council in New York is expressly authorized to recommend changes in rules of practice to anybody vested with the rule-making power.

[20] *Report of the Judicial Council of Massachusetts*, nos. 1–8 (Annually, 1925–1932).

[21] *Report of the Judicial Council of California*, nos. 2–4 (Biennially, 1929–1933).

[22] *Report of the Judicial Council of Rhode Island*, nos. 1–6 (Annually, 1926–1931).

[23] *Report of the Judicial Council of New Jersey*, nos. 1–4 (Annually, 1930–1933).

[24] *Report of the Civil Judicial Council of Texas*, nos. 1–4 (Annually, 1929–1932).

[25] *Report of the Judicial Council of Connecticut*, nos. 1 and 2 (Biennially, 1928, 1930).

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to permit the waiver of a jury in the superior court in all criminal cases except capital ones. The recommendation was repeated in its second, third, and fourth reports before favorable legislative action was secured in 1929.[26] The full effect of this law cannot be demonstrated from statistics available. The number of jury waived cases is not shown. However, it is noted that for the year ending June 30, 1929 (the last full year before the law went into effect) the number of criminal cases tried in the superior court was 2,553; while the number tried during the year ending June 30, 1931 (the first full year after the new law went into effect) was 3,308. There is a difference between the two of 755 cases.[27] Since non-jury cases can be tried much more quickly than jury cases, at least a part of this gain may reasonably be attributed to the effect of the new law. To say the least, for every non-jury trial there will be an actual saving to the taxpayers of approximately $250.[28]

Another law, recommended by the judicial council in its first report, repeated in three subsequent reports, and enacted in 1929,[29] is apparently demonstrating its usefulness. This measure removes the jurisdictional limits of the district courts in civil cases, providing the defendant a right of removal to the superior court for a hearing with or without a jury in cases involving more than the former jurisdictional limits of $3,000 ($5,000 in Boston). Since this law became effective it appears that many cases formerly filed in the superior courts are being brought into the district courts. During the year ending June 30, 1926, a total of 70,326 civil cases were filed in these two systems of courts, of which 38.5 per cent were in the superior courts. During the year ending June 30, 1929, the number entered in the two kinds of courts was 99,235, of which 37.4 per cent were entered in the superior courts. Taking the four years July 1, 1925, to June 30, 1929, the number filed in both kinds of courts was 337,868, of which 38.3 per cent were in the superior courts. On the basis of these facts, we are perhaps justified in taking 38.3 per cent as the proportion of such cases normally coming into the superior courts before the law under consideration went into effect. But if we take this proportion of the cases filed in the two kinds of courts during the year ending June 30, 1933, we get 41,180 instead of 32,190, the number actually filed in the superior courts during this latter year. The difference between these two latter numbers, or 8,990, may reasonably be accepted as the "effect" of the new law. However, there was a gain of 1,611 in cases appealed from the district courts to the superior courts in 1933 over

[26] *Acts and Resolves of Massachusetts*, 1929, ch. 185.

[27] *Report of the Judicial Council of Massachusetts*, no. 9, p. 13 (1933).

[28] This is the estimated cost of a jury trial in the superior court, made by the judicial council in its eighth *Report*, p. 14.

[29] *Acts and Resolves of Massachusetts*, 1929, ch. 316.

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1929, so that the apparent net reduction of cases in the superior courts during 1933 (year ending June 30) was 7,379.[30]

Since the superior court dockets are usually overcrowded, and since trials in the district courts are without juries, there can be little doubt that this law has proved its usefulness as a time- and money-saver. Mr. Frank W. Grinnell, secretary of the council, considers this act one of the most important resulting from the work of the council.[31] Massachusetts can by no means be said to have a judicial utopia, but it can hardly be denied that the judicial council has accomplished much good in the Bay State.

An act which seems of slight importance, but which nevertheless saves a few dollars—whether deflated or inflated—for the taxpayers is one recommended by the civil judicial council of Texas.[32] This act dispenses with the file docket in the courts of civil appeals and provides for the docketing of cases directly on the trial docket. For the nineteen years during which the file dockets were required to be kept, not a single order was entered upon them. The books cost from $30 to $50 each, made additional work for the clerk, and increased the volume of archives to be preserved. This single example shows the need of some agency to study the judiciary in order to point out useless appendages to the organization, procedure, or even equipment, of the courts.

In a state with a complicated court system such as that found in Texas, it is often difficult for even the best lawyers to determine in what court a particular case should be started. In the past, when a case was filed in the wrong court, the statute of limitations ran against it from the day of filing. On account of overcrowded dockets, necessary and unnecessary delays, etc., innocent parties often found themselves thrown completely out of court for no other reason than that they had made the wrong guess as to which courts their cases should have been filed in in the first place. Upon recommendation of the council, a law was passed in 1931 extending the period of limitation in such cases, unless the party shows an intentional disregard of jurisdiction.[33] It is impossible to say precisely how many cases will be "saved" by this law, but judging from the number that have been reversed on this ground by the highest court of civil appeals in the past, the figure will be considerable.

Almost every reform suggested by a judicial council directly, and in a sense adversely, affects some person or group of persons in the state. Regardless of the good to the public generally, or to certain sections of the public, which such proposed laws will bring about, there will usually

[30] *Report of the Judicial Council of Massachusetts*, no. 6, p. 64, and table opposite; no. 7, p. 50, and table opposite; no. 8, p. 70 and table opposite; and no. 9, p. 70, and table opposite.

[31] Personal letter to the writer.

[32] *Texas General Laws*, 1931, 99 (Regular session).

[33] *Ibid.*, 1931, 124.

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be more or less opposition to each proposed reform. In its fourth report, the Texas council proposed a bill permitting citations to be served and returns made by registered mail, upon request of one applying for citation. At present, citations ordinarily cost from $2.25 upwards. This proposed law would reduce this sum to twenty-one cents for the service and return. However, the bill met strong opposition and failed to pass.[34]

The judicial council of Rhode Island recommended, and the legislature passed, a law requiring that in civil cases originating in, or appealed to, the superior court, if neither party before the assignment day demands (in writing) a jury trial, the case shall be tried without a jury.[35] This, on its face, seems to be of little significance. However, in 1928, in Providence and Bristol counties, out of 521 cases tried, only 13, or .24 per cent, were tried without a jury; while in 1933, out of 483 cases tried, 138, or 28.57 per cent, were tried in that manner. It has been estimated that a jury trial in these counties costs $238.77. Therefore, a saving of approximately $32,950.26, speedier trials, and a less congested court docket have resulted from the law.[36]

Another law passed upon the recommendation of the Rhode Island council is one changing the method of appeal, and abolishing removal by transfer, of civil cases from the district courts.[37] Previous to the adoption of this law, an appeal could in effect be taken by claiming a jury trial after decision, or a removal to the superior court could be secured by claiming a jury trial on entry day. Since its adoption, a jury trial cannot be claimed at all in the lower court, but an appeal may be taken after decision upon payment of reasonably substantial costs. After the case has reached the superior court, jury trial, if desired, may be claimed as in cases of original entry in the court (see last paragraph above). The effect of this law is easily perceived. In 1928, the number of claims of jury trial on entry day totaled 1,089, and after decision 934. The new law did away altogether with the first kind and has reduced the number of the second. In 1932, the number of the latter kind dropped to 667, a decline of 28 per cent. The percentage reduction in the total number of appeals or removals, that is, counting those in which juries are claimed either on entry day or after decision, is about 67 per cent—in Providence and Bristol counties, 68 per cent. The number of cases upon the district court appeal trial calendar of the superior court (for Bristol and Providence counties) dropped from 956 in 1928 to 147 in 1933, or 84 per cent.[38]

[34] *Report of Texas Civil Judicial Council*, no. 4, p. 10 (1932). It is a well-known fact that if this bill were enacted many fee-paid officers would lose money.

[35] *Laws of Rhode Island*, 1929, ch. 1327.

[36] *Report of the Judicial Council of Rhode Island*, no. 6, p. 8 (1932).

[37] *Laws of Rhode Island*, 1929, ch. 1326.

[38] *Report of the Judicial Council of Rhode Island*, no. 7, Appendix, Table no. 10 (1933).

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Under the old system, the ratio of appeals (and transfers) to civil entries in the district courts was about 1:7; under the new provisions, it is about 1:20; and in the superior courts the ratio of cases on district court appeal trial calendar to the total number of cases on the trial calendars was 1:2.4, but is now 1:4.[39] It appears from a study of the application of this and other laws recommended first by the judicial council that the work of this council offers convincing proof of the usefulness of a council.

In New Jersey, also, good work has been accomplished by the judicial council. One of the crying evils in this state has been the inordinate congestion of the supreme court dockets—with its resultant expense and delay to litigants. Partially to remedy this, the council recommended, and the legislature enacted, a law providing that when a rule to show cause why a new trial should not be granted is allowed by the circuit judge before whom the trial of a supreme court issue has been held, the hearing on said rule shall be had before said circuit court judge (formerly it had to be before a supreme court judge).[40]

To quote from a report of the council: "The effect of this act in reducing the congestion in the supreme court is already apparent; the number of cases listed in part one of the supreme court at the October term being considerably less than two-thirds the number of cases listed at the May term. Litigants have been saved the cost of having the record transcribed by the court stenographer in practically all of such cases, and of having the record and briefs printed in every such case. What is even more important, they have been spared the delay under the former practice of six to eight months in obtaining a decision on the rule; under the present practice, the circuit court judges are hearing arguments on rules to show cause within a week after the trial and are disposing of most of them by oral opinion at the conclusion of the argument. . . . The new practice . . . seems to have met with the general approval of the bar."[41]

In order to permit a better use of judicial man-power, a law was passed in 1931, upon recommendation of the judicial council, providing that the chief justice of the supreme court may from time to time assign or appoint common pleas judges to hold such of the circuit courts as he may deem expedient.[42] This law was supplemented in 1932 by one permitting the same authority to assign judges of the circuit court to courts other than their own,[43] this, too, recommended by the council. Statistics are not available to show the number of assignments made under these laws, but beginning with the year 1931, there has been a noticeable falling off in the number of cases listed for trial at the fall

[39] *Ibid.*, Table no. 4. [40] *New Jersey Public Laws*, 1931, ch. 356.
[41] *Report of the Judicial Council of New Jersey*, no. 2, p. 1 (1931).
[42] *New Jersey Public Laws*, 1931, ch. 317. [43] *Ibid.*, 1932, ch. 15.

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terms of court in eight of the twelve counties. In 1933, only one county showed an increase over 1932.[44] The judicial council in New Jersey apparently has to wage a battle for every reform accomplished. The secretary thinks "it is generally conceded that the reforms thus far accomplished by the council would never have taken place had the council not been created."[45]

It will be recalled that California's council is a so-called strong council, created by constitutional amendment. It will be of interest, therefore, to note some of the accomplishments of this council in its field of positive powers, as well as in respect to the laws it has recommended.

As was noted above, it is provided that the chairman of the judicial council in California, who, incidentally, is the chief justice or acting chief justice of the state's supreme court, "shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred."[46] This provision was characterized by the late Chief Justice Taft as the most valuable provision in the California plan. During the first six years of operation under the law, 3,983 assignments of judges to courts, other than their own, were made. The council says: "One of the most gratifying results of the consistent use in other courts of judges who have spare time in their own courts is shown in the report of the council of the condition of the appellate business of the state. The report for the past two years will serve to indicate that a substantial reduction has been made in the number of undecided cases, as compared with preceding years. Two years ago, there were 2,242 uncalendared cases in the supreme court and district courts of appeal. This year's report shows only 1,443, a reduction of 799, and of the 1,443 pending cases, in but 659 had the respondents' briefs been filed."[47]

The council continues: "Two factors may be said to have contributed to this reduction of the number of appealed cases. First is the service in the district courts of appeal of judges of the superior court assigned by the chairman of the judicial council. The number of published opinions written by justices *pro tem.* in the district courts of appeal during the last biennium was 820—a number, coincidentally, closely approximating the number of the reduction of uncalendared appeals during the same period. The total time given by these justices *pro tem.* approximated 160 months, or the equivalent of full time for six justices and 16 months for

[44] *Report of the Judicial Council of New Jersey*, no. 4, pp. 22–23 (1933).
[45] Personal letter to the writer. [46] See *supra*, note 7.
[47] *Report of the Judicial Council of California*, no. 4, pp. 8–9 (1933).

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a seventh. The total cost to the state was $44,667.90. The output above shown is considerably above the average output of the same number of regular justices—whose time is broken by the calling of calendars and the consideration of rehearings of decided cases, as well as petitions for relief in special proceedings—such average output for a ten-year period, as shown in the second report of the council, being 52 opinions per year by each justice. Had the man-power in these courts been increased by two additional regular divisions, the salaries of six justices would have cost the state $120,000 (disregarding the seventh judge mentioned above), or almost three times the actual cost. In addition, the cost of clerical and secretarial assistance, permanent quarters, and other expenses necessarily incident to the creation of new divisions, based on the appropriation for the two new divisions established in 1919, would have approximated $40,000. We may, therefore, justly assert that the *pro tem.* justice method has disposed of this great amount of appellate business at a biennial saving to the state of over $100,000. We therefore urge a sufficient appropriation to continue this assistance."[48]

As a result of the council's activities in the mobilization and utilization of judicial man-power, Mr. B. Grant Taylor, secretary of the council, believes "it is reasonably demonstrable that the saving for salaries alone, thus accomplished, as compared with what would have been the cost of paying a corresponding number of new judges, was $650,000."[49] Since the council was established in 1926, this represents less than eight years' savings.

Laws recommended by the council have contributed a share in bringing about improvement in the administration of justice in California. Appellate divisions were created in the superior courts of Los Angeles and San Francisco under an act approved in 1929.[50] In three years, the Los Angeles superior court handled 2,613 appeals, over 1,200 of which would, but for the law, have been appealable to the district court of appeal.[51] Increasing the jurisdiction of municipal courts (including money demands up to $2,000 at present) has greatly relieved the higher courts.[52]

In this paper we are interested primarily in what may be termed the measurable results of some of the work of certain judicial councils. For example, an attempt has been made to show that laws first recommended by councils have actually brought about speedier justice, reductions in court expenses, or some other real improvement in the administration of justice. Perhaps another aspect of the work of judicial councils, i.e., surveys or investigations carried on by, or under the supervision of, such

[48] *Ibid.*

[49] Personal letter to the writer.

[50] *Laws of California*, 1929, ch. 475.

[51] *Report of the Judicial Council of California*, no. 4, pp. 9–10 (1933).

[52] *Laws of California*, 1931, ch. 834.

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bodies, should be given consideration. The good results of this feature of their work may not be as apparent as those flowing from specific recommendations, but the work is no doubt of great value.

In California, when the judicial council was organized in 1926, no funds were provided for research and investigation. However, Judge Harry A. Hollzer, a superior court judge, offered, if relieved from his immediate judicial duties, "to assume the direction of a preliminary survey respecting the present condition of the judicial business throughout the state." His offer was accepted, and he proceeded at once to the task. In the course of it, he visited nearly all the counties of the state for personal interviews with the judges of the superior courts and the county clerks and for conferences with members of the bar. He also visited several other states, the national capital, and certain Canadian provinces. With such information as he gathered on these visits, and with the statistics collected from the court clerks in California by the judicial council, he was able to point out in his report many outstanding defects in the California system, and noteworthy improvements in other jurisdictions, and to submit a genuine program of reform for California. Judge Hollzer continued his research for the council through 1930. Further suggestions were made; but about this time he accepted an appointment to the federal district court, and the council had to look elsewhere for a person or agency to carry on its research.

Outstanding among investigations to be credited to judicial councils are the extensive studies carried on in Ohio. In 1929, the council in that state arranged with the Institute of Law of Johns Hopkins University for a three-year study of judicial administration. The work was carried on under the auspices of the council with the coöperation of the state bar association, the attorney-general, and the leading law schools of the state. Embodied in a series of monographs, pamphlets, and reports, and published by the Institute, the results of these studies furnish a veritable mine of information. Writing in this REVIEW after the publication of the council's second report, Mr. F. R. Aumann said that the survey was well advanced, and that although by no means completed, it "already furnished the largest mass of information concerning litigation in any American state."[53]

The Michigan judicial council makes special studies of certain problems of judicial administration and submits the results in its annual reports. The first study was of "condemnation procedure"; the second was a general study of "discovery procedure"; and the third was on the organization and operation of courts of review. These were included in the first, second, and third annual reports respectively.

[53] "The Ohio Judicial Council: Studies and Reports," in this REVIEW, Vol. 27, p. 956 (Dec., 1933).

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In its first report, the judicial council of Maryland stated that it was not its "prime purpose to find opportunity for legislation." Accordingly, it has followed a procedure somewhat similar to that pursued by the Michigan council, and has carried on studies of particular subjects without specific recommendations. Some of the subjects upon which it has reported are "Use of Judgments by Confession," "Proceeding by Information in Criminal Cases," and "The Cost of Resort to Courts in Non-Contentious Proceedings." The value of such reports to the policy-forming branches of the state government is apparent.[54]

The judicial council of North Carolina prepared and sent out a manual for sheriffs to guide these law-enforcement officers in the performance of their duties. In Massachusetts, the council prepared and sent out a letter to judges and court clerks pointing out common errors to be avoided.[55]

Finally, in this connection it may be mentioned that members of the various state judicial councils have formed a National Conference of Judicial Councils to serve as a clearing house of ideas and information regarding problems of judicial administration. This Conference is under the auspices of the American Bar Association.[56]

A great many people, especially those inclined to be cynical, might contend that the creation of a judicial council is merely establishing "another commission," or "more bureaucracy," or perhaps another scheme for giving deserving politicians "junketing trips." It is true that councils have not been uniformly successful. On the whole, however, they appear to take their tasks seriously, and are rendering substantial, perhaps distinguished, service.

It may be worth while to go behind the scenes and see how some of the councils work. In Massachusetts, the body meets regularly at least fortnightly, except during the three summer months, the meetings being held uniformly at Boston on Saturday mornings. Secretary Grinnell states that during the nine years of the council's existence the meetings have been well attended—with an average of six or seven members out of a total of nine.[57] Before a meeting the secretary mails each member a list of the subjects to be discussed, together with copies of suggestions or drafts of proposed legislation.

In New Jersey, it is the habit of the council to work through committees. After a committee has studied a subject assigned to it, it reports to the council as a whole. Meetings of the council are held at least once a month except during July and August.[58]

[54] J. C. Ruppenthal, "Work Done by Judicial Councils," 14 *Journal of the American Judicature Society* 21 (June, 1930).

[55] *Loc. cit.*, 99 (October, 1930).

[56] *Ibid.*, 77.

[57] Personal letter to the writer.

[58] Personal letter from the secretary of the judicial council of New Jersey to the writer.

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Texas being a large state, its council cannot have frequent meetings, especially since the total annual appropriation has for some years been only $1,000. Consisting of sixteen members, the council has divided itself into five regular committees of three members each, except one on court procedure which consists of seven members, with three members in each of two sub-committees into which it is divided. The various committees consider matters in their respective fields and report to the council at its infrequent meetings. One regular meeting and two or three special meetings are held each year.[59]

In general, it may be said that a council's methods of work depend largely upon whether the state is a small or a large one, and upon whether the council has a paid secretary and adequate research facilities. The most successful councils do not attempt to function as things apart. Rather, they coöperate with bar associations, law schools, civic bodies, and other organizations, including, of course, the executive, legislative, and judicial branches of the respective state governments.

As illustrating employment of the service of a non-governmental agency, the Connecticut judicial council's use of the Yale Law School faculty may be taken. We find the council acknowledging this service as follows: "We renew our acknowledgments to the Yale School of Law for its continued help in providing the council at different times with some of its best research fellows or students to look up some of the problems connected with our work. Mr. Paul W. Bruton, of the Yale School of Law, prepared for us a valuable memorandum on the admissibility of entries in the regular course of business and which we later quote from extensively in discussing this subject. Mr. John Wallis, recommended to us by the Yale School of Law, prepared a brief upon the 'constitutional questions involved in the adoption of a system of district courts in Connecticut,' which Professor Dodd and Dean Clark of the Yale School of Law went over before its submission to us. It proved very serviceable in making up our report on the district court system of Connecticut. Mr. Wallis also made a very complete survey of the district courts in and around Springfield, Massachusetts, after study of these courts for upwards of two weeks. This was of service to us in determining many matters regarding these courts."[60] The council expressed its wish to coöperate also with the legislative branch of the government, saying in its third report: "It is our desire to establish closer relations with the general assembly, and to work in coöperation with its judiciary committee. The Massachusetts judicial council is called upon frequently by the senate and house to make studies of and render opinions on acts

[59] *Ibid.* Secretary of Texas civil judicial council:

[60] *Report of the Judicial Council of Connecticut*, no. 2, p. 14 (1930).

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before the general assembly, or on proposed objects of legislation. If a similar plan were adopted in Connecticut, the council might be able to render valuable service to the general assembly."[61]

We are told that in California, during the 1931 session of the legislature, activity by the council was at a low ebb, and that its proposals did not fare well. "A favorable development, however," says the secretary of the council, "was the appointment by the president of the state bar, on the invitation of the chairman of the council, of an advisory committee composed of outstanding lawyers from various parts of the state, to attend meetings of the council and participate therein, and acceptance of the invitation from the council to the deans of the law departments of the University of California, Stanford University, and the University of Southern California, to attend and participate in consideration of all matters presented."[62]

In the 1933 report of the council in California, it is stated that: "A cooperating and intercommunicating arrangement between the research department and sections of the state bar, under the directorship of Professor Evan Haynes of the University of California and the judicial council, is now in effect; and this, in conjunction with the unselfish assistance and advice from the members of the state bar advisory committee, provides a helpful substitute for a special research director for the council."[63]

Probably no other judicial council has gone so far in its effort to secure aid and advice from different individuals and organizations as has that in New Jersey. In its second report, it availed itself of the opportunity of "expressing its gratitude to the members of the bench and bar, the clerks of the various courts, as well as the members of the business and civic associations, for their assistance and suggestions covering the administration of justice in this state." It said that substantially all of the recommendations made in the report were submitted not only as a result of unanimous agreement of the members of the council, but after conference with, and with the whole-hearted coöperation of, the judges of the various courts involved in the proposed changes.[64]

In submitting a proposed amendment to the judiciary article of the constitution, the council in New Jersey testified that it had sought the advice and counsel of various members of the bar (naming five in particular), and had conferred with representatives of the institutions of higher education in the state and the accredited representatives of the

[61] *Ibid.*, no. 3, p. 9.

[62] Personal letter from B. Grant Taylor, secretary of the judicial council of California, to the writer.

[63] *Report of Judicial Council of California*, no. 4, p. 11 (1933).

[64] *Report of the Judicial Council of New Jersey*, no. 2, pp. 28–29 (1931).

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several county bar associations, and with committees of the New Jersey Press Association, the New Jersey Federation of Labor, the New Jersey Federation of Women's Clubs, the New Jersey State League of Municipalities, and a committee representing one hundred credit and business organizations of the state. It can hardly be denied that the council in this state is at least trying to act only upon full "information and belief."[65]

Professor Sunderland seems to imply that judicial councils, as now constituted, are rather imperfect and unwise creations, and he thinks that a more efficient organization could be had if the bar took full charge. Of twenty-one council membership lists presented by him, at least fourteen are composed entirely of lawyers or men learned in the law, five probably consist altogether of lawyers (the possible non-lawyer members being the chairmen of the legislative judiciary committees), while only two are clearly not wholly of the legal fraternity. The percentage of lay members in these two is 18 3/4 in the case of the Texas council and 16 2/3 in that of the council of North Carolina. In most cases, a majority of the members of councils hold public office—chiefly judicial.

If the legal profession can assume the burden of "convincing the public and its legislative representatives that measures which it proposes are in the interest of the people as well as of the profession," as Professor Sunderland thinks it could, why can it not equally assume the burden of convincing this same public that it should select as public officials, such as judges and prosecutors, men of "personal ability, liberality of mind, imagination, soundness of judgment, and the strength of their interest in making the administration of justice a satisfactory public service?" It is the present writer's frank opinion that if the bar will assume the task of "cleaning up" its own membership—including those on the bench and those engaged in the practice of law—the good work accomplished by councils will become more effective.

Professor Sunderland asserts that the task of formulating proposals for improving the judiciary is a somewhat simple one, but that putting such proposals into law is much more difficult. Granting this, it may be said with him that the latter task is a political one. With the personal knowledge that virtually every voter has of certain members of the legal profession, it may be justifiable for him to be skeptical of a program which has "the approval and support of the entire profession." Since this more difficult part of a program of reform is political in nature, one might ask if it would not be better for the bar to "line up" behind this buffer organization the judicial council—if its members really desire to assist in a worth-while program of reform?

The writer is not unmindful of the great public service which the legal

[65] *Reprint of the Report of the Judicial Council of New Jersey*, 1932, 4–5.

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profession has rendered the country. The judicial council itself came about as a result of the efforts of lawyers. Councils have been created only in states in which active organized bars have worked for their creation. However, it does not follow that the judicial council should be merely a committee of the bar association, any more than that our judiciary should be merely an integral part of the organized bar, rather than a coördinate branch of our government.

True it is that the members of the bar must coöperate if the administration of justice in this country is to be raised to a high degree of efficiency. But as an agency of reform, bar committees on "jurisprudence and law reform" do not appear to be sufficient. It is yet to be demonstrated that judicial councils within the bar associations, as those in Idaho, South Dakota, Utah, and Oklahoma, will accomplish better results than those created without reference to the organized bar. Even in those states having strong integrated bars, programs of reform cannot be carried through unless the political branches of the various governments are willing to support reform movements. The present study indicates that the judicial council is well adapted to serve as a sort of liaison agency between the organized bar, or other agencies interested in improving judicial administration, and the political branches of the state government.

PRESSLY S. SIKES.

Indiana University.

A New Method of Selecting Judges in California. Many political scientists have condemned direct election of judges. Of late, an increasing number have recommended the plan of having a judge "run against his record" instead of having him run for office on the strength of his record and at the same time campaign against declared opponents. In California, an experiment has recently been undertaken designed to test the validity of such a plan.

By popularly initiated constitutional amendment, originated by the Commonwealth Club of California and supported by the state chamber of commerce, the state has modified its long-used method of selecting judges of the supreme courts and the district courts of appeal.[1] The amendment neither ends all popular election of judges nor vests all authority for selection in the hands of state officers. It provides that an incumbent, shortly before the close of his term, may signify that he desires to retain his judgeship. His name then appears on the ballot, the electorate voting merely on whether or not he shall be retained in office. If the

[1] Sixty-five per cent of those who voted at the election voted on this proposal, which was adopted by 810,320 to 734,857.

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majority vote "No," a vacancy occurs; and in all cases of vacancy, from this cause or any other, the governor—subject to the approval of a newly created commission on qualifications—makes an appointment. The commission on qualifications acts by a majority of its membership, and is composed of "(1) the chief justice of the supreme court, or, if such office be vacant, the acting chief justice; (2) the presiding justice of the district court of appeal of the district in which a justice of a district court of appeal . . . is to serve; . . . or, in case of the nomination or appointment of a justice of the supreme court, the presiding justice who has served longest as such; . . . and (3) the attorney-general." The name of each nominee thus selected to fill a vacancy appears on the ballot at the next general election, the voters again deciding one thing, *i.e.*, whether the person appointed shall serve out the term for which he was appointed. A favorable vote continues the judge in office. If a majority vote "No," a vacancy again occurs.

The amendment provides also that superior (county) court judges may be selected in like manner in the case of any county voting to give up the existing method of election in favor of the new plan. It stipulates, further, that the recall provision of the constitution shall continue to apply to all judges, and it instructs the legislature to establish a system of retirement allowances for judges.

Unless, however, the influence of the commission on qualifications becomes an important factor in the making of appointments, the situation will not be greatly changed from what it has been. Although it is true that three of the present seven judges of the supreme court were originally elected to that body,[2] the great majority of the judges selected in the last two decades (fifteen out of twenty-two) reached that court originally by executive appointment. And during this period only two justices appointed by the governor who ran for election immediately following their appointments were defeated. One man accepted the appointment merely to fill a vacancy, not expecting to run for election, and not running. The remaining twelve appointed justices ran for election and were successful in at least one election, one justice alone failing in his second try at the polls.

The district courts of appeal were created thirty years ago. Of the fifty-one justices who have served in these courts, thirty-eight were originally appointed by the governor. Twenty-nine of those thus appointed sought continuance in office at the hands of the voters, and of these only four were defeated.

[2] A recent survey of the selection of judges in California inaccurately states that four members of the present court were originally elected. See J. Edward Johnson, "Should California Change its Present Method of Selecting Judges?," *State Bar Journal*, April, 1933.

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In the campaign preceding the adoption of the recent amendment, some criticism was voiced concerning the creation of the commission on qualifications. The commission was viewed largely with one thing in mind, *i.e.*, the effect that it would have upon the type of judge selected. Some thought might well have been given to another factor, namely, the effect of the new power upon the offices the incumbents of which make up the commission. The legal powers of the attorney-general, to mention only one of the three, are now extensive.[3] Not only might the wisdom of placing some measure of control over judicial appointment in the hands of the chief law-enforcement officer of the state be questioned, but it is fair to assume that the very placing of this power in the attorney-general's hands will not unlikely alter the attitude of many interest groups in the state toward the office.

CHARLES AIKIN.

University of California.

[3] Another popularly initiated constitutional amendment (drafted by the state bar association) adopted at the same election increased the powers of this official and, in particular, wrote into the fundamental law several provisions on the subject which previously were found only in the statutes.

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The Position of the English Monarchy Today. On November 29, 1934, the youngest surviving son of George V was married, to the accompaniment of national excitement greater than that caused by any similar event since Queen Victoria's jubilee of 1897. On May 6 of the present year, the nation and the Empire celebrated George V's jubilee, the twenty-fifth anniversary of his accession to the throne, and popular enthusiasm was even greater than in November. The stability and popularity of the British monarchy is impressive in a Europe which less than twenty years ago saw most ruling monarchs dethroned, and has since witnessed the deposition of Alfonso XIII in Spain and (more recently still) the assassination of the most successful Balkan king. Except for Italy, where the development of Fascism has greatly weakened the position of the king, monarchs exist in Europe only in three Balkan countries and in those regions of northwestern Europe where democratic government has been long established—Scandinavia, the Low Countries, and the British Isles. It is a common assumption that the limited monarch has been found not only compatible with but a support to the democratic capitalistic state. Less obvious recent developments, however, suggest that in England, where limited monarchy is having its apotheosis, the future of monarchy is certainly less predictable, and perhaps less sure, than it has been supposed to be. For the English monarchy has been drawn again into politics—domestic and perhaps foreign.[1]

The English monarchy is constitutional (i.e., limited) in two senses. The House of Hanover owes its tenure of the English throne quite definitely to the Act of Settlement of 1701, which gave the throne to George V's ancestors on some terms specified and others as clearly implied. The Statute of Westminster of 1931 reëmphasized and extended the parliamentary nature of the monarchy by providing that any change in the succession to the throne must be approved by the British and by all dominion legislatures. The English monarchy is constitutional (i.e., limited) in a second sense. The sovereign, who owes his legal position

[1] The rumor (apparently widespread on the Continent) that the marriage between Princess Marina and the Duke of Kent is a prelude to a restoration of monarchy in Greece, supported by England, has probably no serious foundation. But the unusually meticulous precautions against trouble in London during the wedding festivities were caused by a fear of foreign plotters. The Princess Marina, a second cousin of her husband, belongs to the deposed royal family of Greece. She had eight bridesmaids (all relatives): (1) her three sisters, also "princesses of Greece;" (2) Juliana, the heiress to the Dutch throne, a distant cousin; (3) the Princess Elizabeth of York; (4) the Lady Iris Mountbatten and the Lady Mary Cambridge, descendents of George III; (5) the Grand Duchess Kira, also a descendant of George III, who belongs to the deposed Russian imperial family.

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to acts of Parliament, owes his political position to his willingness to carry out the will of Parliament.

Queen Victoria is said to have been the first constitutional monarch of England, and to have been made so by her adviser Lord Melbourne, a Whig. The nineteenth-century conception of the monarchy was expressed by Walter Bagehot in language which has become famous—that the sovereign has "three rights—the right to be consulted, the right to encourage, the right to warn." This thoroughly Whig conception of the monarchy, taken over by nineteenth century Liberals, was never seriously challenged in public during Victoria's lifetime, but the recent publication of some of the letters from her later years has shown how unconstitutional in the second sense she often was. After the Home Rule split in the Liberal party, she is found playing party politics, in the background, though not ineffectively.[2] More clearly than in the volumes of her *Letters*, her political activity is revealed in Philip Guedalla's *The Queen and Mr. Gladstone* (1933–34) and in Sir Frederick Ponsonby's *Sidelights on Queen Victoria* (1933). Queen Victoria perhaps did not give constitutionality to the monarchy; she did, with her enormous and increasing popularity, give stability.

Edward VII was much more content than his mother to accept the position of constitutional monarch. The product of an ineffective attempt to educate a very ordinary prince into a paragon, he was prevented by his mother from taking an active part in public affairs, and succeeded to the throne at the age of sixty, with little experience, aptitude, or interest in either politics or administration, and with marked temperamental handicaps.[3] He acquired a reputation for political skill and activity not at all deserved. Especially in the field of foreign affairs, he had a reputation for determining policy which was quite out of accord with actuality.[4] In fact, in every crisis that arose in his rather peaceful reign, Edward allowed his ministers to make decisions, even when he disliked their policy. As a result, though Edward perhaps kept intact the popularity of the throne, he weakened the political position of the sovereign, and possibly deserves to be characterized as a constitutional monarch in the strictest Whig sense.

In regard to monarchs now long since deceased, there is little reason

[2] See especially *The Letters of Queen Victoria, Third Series: 1886–1901*, ed. by G. E. Buckle (1930–1932). It must be remembered that these letters are only selections from a vast correspondence, and that the editors had a certain discretion imposed on them.

[3] Dean Inge remarks of Edward that "those who were brought into close contact with him think that he had not more than fair average ability." *England* (1927), p. 241.

[4] The honest and (if one reads between the lines) informative official life by Sir Sidney Lee quite destroys the legend.

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for concealment of fact. But together with the great modern prestige of the English monarchy has grown up a habit of protecting the occupant of the throne and his family from any rumor, whether true or false, that might diminish their prestige. The materials for a study of the reign of George V are therefore not in print.

In personality and by training, George V was eminently fitted to be a constitutional monarch. Not specially trained for government, having no political interests, and lacking intellectual vigor, he nevertheless possessed the shrewdness, the sense of duty, the patriotism (real, if a trifle provincial), and the imperturbability of the better members of that class of his subjects commonly known as country gentlemen. Unfortunately, his reign began with a first-rate crisis, and has been punctuated by a succession of political emergencies.

George V came to the throne at the height of the struggle over the Parliament Act of 1911, and he had to decide to what extent he would support his reforming ministers, who, backed by the House of Commons and the country, were opposed by the aristocracy, traditional supporters of the throne. The mediatorial functions of the sovereign were tried, but failed. Should the king guarantee his Liberal ministers a creation of peers which would carry out the will of the Commons and people, yet bring the House of Lords into contempt? Reluctantly, but not so reluctantly as to incur discredit, the king gave support to his ministers, and the Parliament Act was passed. Almost immediately another crisis arose, over the Home Rule Bill. Here the same parties fought over essentially the same issue. The Liberals expected the king to support the policy of a majority of his Commons; the Conservatives tried to make a "patriot king" of him and encouraged him to oppose his ministry.[5] Whether wisely or not, Mr. Asquith compromised, and the war of 1914 intervened to postpone a facing of the Irish problem.

During the war, the monarchy grew unpopular. Stronger men than the king stood in the center of the stage. In the anti-German furore, it could not but be realized that the English royal family was German in blood—a fact which the king's assumption by royal proclamation of the surname of Windsor did little to conceal. Monarchy was becoming discredited everywhere. There were few cheers for the king and queen of England on the rare occasions when they appeared in the streets; the popular mind thought of the royal couple as unattractive and unsympathetic. The English monarchy survived the war. But though there was little ardent republicanism in England, there had come to be a widespread feeling that the monarchy would inevitably disappear. Doubt

[5] See A. Wilson-Fox, *The Earl of Halsbury* (1929), pp. 288–289, and Graham Wallas, *Our Social Heritage* (1921), pp. 233–234.

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was often expressed as to the capacity of the heir to the crown to wear it with dignity.

Many vested interests, personal as well as political, depend not merely on the existence of the monarchy but on its general popularity, and these interests determined to restore the prestige of the throne. Since England had—unfortunately—become a democracy, the appeal of the monarchy must be to the mass of half-educated subjects. A legend of the monarchy was created, by precisely the same methods of selective publicity that are used to "build up" any great popular figure. The initial position offered certain great advantages. English newpapers and periodicals are either conservative, snobbish, or decent, and during the twentieth century have been willing to impose a good many restrictions on themselves in recording the activities of royal personages.[6] There was thus a negative check on undesirable publicity. By careful management and unremitting activity, news of an attractive sort was provided. The quasi-ceremonial duties of the royal family were multiplied; the unveiling of monuments, visiting of hospitals, attending of race meetings, dining and lunching with city corporations, launching of vessels, etc., became incessant. With the coming to maturity of the royal princes and princesses, the royal family resumed its place as social leaders of the community. The marriage, engagement, or suspected engagement, of each royal scion became for the sentimental British public a source of innocent speculation. The domestic virtues of the wearers of the crown were set forth, and with the death in 1925 of the dowager queen, Alexandra (a personage of extraordinary personal charm), Queen Mary was freed from an inevitable handicap.

Respect for the king himself grew constantly; the respect deepened into reverence when he recovered almost miraculously from a serious illness in the winter of 1928–29. Meantime, the royal family has become definitely English through marriage. The Princess Royal (H.R.H. the Princess Mary, Countess of Harewood) married the heir to a wealthy and moderately old earldom. The Duke of York, the king's second son, married Lady Elizabeth Bowes-Lyon, daughter of a Scottish earl. From each of these marriages there are at present two children, all close, in order of succession, to the throne. So various in age, sex, and interests is now the royal family that every subject can see in one of its members his own counterpart, in whose activities he may feel a personal interest and take a personal pride.

The picture thus created in the minds of the British public is an impressive one, and has given the monarchy a tremendous popularity. How

[6] Quite the opposite was true earlier, when scandalous stories, whether true or false, about members of the royal family appeared frequently in the periodical press.

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closely the legend corresponds to fact is not a serious consideration, as long as the average Englishman accepts it. The English ruling classes—who still exist, though their boundaries are widening—do not insist on believing the legend themselves; they have no objection to a dissemination of the truth, and to a perfectly realistic discussion of persons and actions, so long as that discussion is limited to the upper and parts of the upper-middle class. In no considerable society in the world, perhaps, does information pass more freely from one person to another by word of mouth, and the ruling classes are perfectly informed as to the capacities and weaknesses of their nominal rulers. For the populace they have painted a Royal Academy portrait and hung it on the line; for themselves they keep a photograph, not retouched.

George V has been more fortunate in the later than in the earlier years of his reign. The Irish problem was settled in 1921 without serious division amongst Englishmen. When the first Labor government took office in 1924, he was correctly advised of the harmless nature of a reputedly revolutionary way of thought, and the leaders of the Labor party and the monarchy learned to coöperate to their mutual advantage. In Mr. MacDonald, in particular, he has had a loyal and devoted minister. The particular crisis that raises questions for the future, however, was that of 1931.

In 1931, the Labor cabinet was unable to agree upon a policy to meet the sudden financial crisis. Mr. MacDonald, the prime minister of a minority government, was in consultation with leaders of the other parties and with the banking interests, and was convinced that his policy, though acceptable to only a small minority of his cabinet, was essential to the salvation of the country. When the disagreement in his cabinet proved to be permanent, his normal course would have been to resign, whereupon the king would have invited Mr. Baldwin, the leader of the largest opposition party, to take office. There seems no doubt that Mr. Baldwin would have succeeded in forming a government (whether of one party or a coalition) which would have been successful in meeting the crisis. What happened, however, was that after several audiences with the king, who had returned from Scotland when the crisis developed, Mr. MacDonald announced that he had received the king's commission to form a "national" government, a coalition of all parties—and proceeded to do so. The great support which the "national" government received in the crucial period that followed is a matter of common knowledge.

There is no evidence that the constitutional proprieties were not observed in 1931 by both the king and Mr. MacDonald. It has since become sufficiently a matter of record[7] that Mr. MacDonald had long

[7] For instance, in Viscount Snowden's *Autobiography*.

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wanted to preside over a national government; so that the king is not held responsible for what happened. He acted on Mr. MacDonald's advice throughout, and the House of Commons upheld Mr. MacDonald. Nevertheless, several serious questions present themselves. In the first place, one reason for the immediate acceptance of the project of a national government under Mr. MacDonald was the impression quite generally propagated that the king had stepped into the emergency and himself insisted on the arrangement.[8] In this case, the king's supposed intervention was popular. But if the king is apotheosized into a sort of political *deus ex machina*, it is possible that he might in some future emergency choose the unpopular side. Again, the king took the advice of his prime minister rather than that of the great majority of the cabinet. Does this mean that in the future the king may take the advice of any minister, however politically isolated, as long as that minister ventures to predict the support of a House of Commons majority? And finally, the increasingly large and self-conscious minority of English voters, members of a Labor party representing economic views unpopular with the aristocracy, the court, and possibly the royal family, cannot avoid the question of whether the king might in future intervene, with the best intentions, to weight the political balance against them. The events of 1931 have shown that the English monarchy is in politics again.

The determining factor in the whole situation is the advice that the king will receive, in a crisis, from his non-ministerial advisers, for it is not supposed that in choosing a prime minister, for instance, he avails himself of no information and no judgment except his own. Ever since the creation of the position of private secretary to the sovereign, it has been assumed that the duty of such a person—who is in theory quite outside politics—is to furnish the king with impartial information and advice.[9] When, for instance, King George chose Mr. Baldwin rather than Lord Curzon as prime minister in 1923, he acted on the advice of Lord Balfour, transmitted through the private secretary, Lord Stamfordham. Such an obligation requires of the private secretary almost superhuman political skill. And in recent times a new difficulty has arisen. Now that party divisions are created largely by economic issues, and most persons of wealth, education, and inherited position are Conservatives, it is natural to find that almost all members of the king's household, and of the circle of his personal associates, have Conservative prejudices.

[8] This story had some support in fact, in that the king had not limited himself to the consultation of his ministerial advisers.

[9] See Sir Frederick Ponsonby, *op. cit.*, pp. 155–156. Sir Frederick Ponsonby, now Treasurer to His Majesty, is son of General Sir Henry Ponsonby, Queen Victoria's distinguished private secretary. He is also brother of Lord Ponsonby of Shulbrede, leader of the Labor party in the House of Lords.

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Only a person of rare gifts can attain complete objectivity in a partisan atmosphere; such gifts are guaranteed neither by the Act of Settlement nor by the history of the House of Hanover.

What, then, will be the future of an English monarchy which events have forced back into politics? The monarchy is threatened from both extreme right and extreme left. The repeated and ardent protestations of loyalty to the crown from Sir Oswald Mosley and his British Union of Fascists do not dispel a conviction that the monarchy in their hands would be revolutionized. On the left, members of the Independent Labor party in the House of Commons have recently attacked the monarchy as parasitic and wasteful.[10] The three great parties, however, all support the monarchy. Even the Labor party, with which the House of Lords is unpopular, is a supporter of the monarchy, as a matter of policy if not of conviction.[11] But to keep the support of that increasing minority of English voters who see a future for their country only in a growth of the Labor movement, must the sovereign throw his influence in their favor rather than (as in 1931) in favor of a party and a system representing the ideals of the past? At the moment, the monarchy is as generally popular as any element in the English political system. It seems destined to endure (if the sovereign be discreetly advised) as long as the present liberal democratic régime endures.

E. P. CHASE.

Lafayette College.

[10] For instance, Mr. John McGovern, M.P. for the Shettleston division of Glasgow, interrupted the king in the midst of his speech from the throne in the House of Lords on November 21, 1933, and in the House of Commons on February 5, 1935, attacked the royal family as "parasites," and made pointed and specific comparisons between the incomes of the king and the Duke and Duchess of Kent, and those of the unemployed. He was encouraged by Mr. David Kirkwood, another member of the Independent Labor party, member for the Dumbarton district. The *New York Times* reports such incidents more fully than do London newspapers. See especially the special correspondence of Mr. Charles A. Selden in the issue of November 22, 1933.

[11] From time to time, some of its more socialistic leaders are accused of disloyalty. Thus, Sir Stafford Cripps, M.P., on January 6, 1935, told the University Labor Federation that when the Socialists come into power they will have to "overcome opposition from Buckingham Palace" as well as from other places (*New York Times*, January 7, 1935). This reference, seized on by the English press as an attack on the king, is to be taken literally, as an attack not on the king but on the king's entourage. Sir Stafford Cripps explained his attitude toward the monarchy itself in a speech two weeks later: "I believe that for a social democracy a constitutional monarchy in the developmental stages is obviously a right thing to have if you start with it. I do not say necessarily you would construct it if you did not start with it, but if you have it, it would be absolute folly to do away with it" (*Manchester Guardian*, January 21, 1935).

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The Japanese Mandate Naval Base Question. Public opinion in support of the efficacy of collective efforts for the preservation of peace has been considerably weakened by the events of the past three or four years. While it is exceedingly doubtful whether much success will attend whatever other courses of action nations may adopt to secure themselves against the world's turmoil, students of international affairs must accept the fact that we are now in an eddy of the current of progress. But there is slight justification for despair. Indeed, much has come through the wreckage of the sanctions failure almost undamaged. In certain large fields of action, there has been success in the attempts of the League and allied institutions to create a better world of international relations. Among other successes, the mandates system stands unchallenged as a large advance in the supervision of colonial administration.

There are, of course, large unsolved problems in the mandates system, as elsewhere. Some of them cannot be solved until further advances are made in the establishment of world community. Others can be solved by judicious use of the materials at hand. One of the latter is the problem raised by the recent rumors concerning the establishment of a naval base in the north Pacific islands which Japan is administering under a mandate from the League. The islands obviously have considerable strategic value in the event of the construction of submarine or air bases, since they lie athwart the route between Hawaii and the Philippines.

There is a tendency in some quarters to confuse the present problem with the problem created by Japan's withdrawal from the League. It seems clear that Japan can continue to hold her mandate even though she has ceased to be a League member.[1] But can she hold it in case the rumors about naval bases are well founded?

The first official notice of rumors about naval bases was taken by the Permanent Mandates Commission at its 22nd session, in the autumn of 1932. On November 11, one of the members of the Commission requested the Japanese representative accredited to the Commission to assure that body that an article in the *Journal de Genève* for February 11, 1932,[2] was mistaken in its statement that Japan had constructed a submarine base

[1] See my article, "Would Japanese Withdrawal from the League Affect the Status of the Japanese Mandate?," *American Journal of International Law*, Vol. 27, pp. 140–142 (January, 1933), and authorities there cited.

[2] The statement by M. William Martin was as follows: "Violant tous les traités internationaux, les Japonais ont installé des bases sous-marines dans les îles sur lesquelles ils exerçent un mandat de la Société des nations." *Journal de Genève*, Feb. 11, 1932, p. 1. The article is entitled "Harakiri," bears the date of Feb. 10, 1932, and deals with various aspects of the "suicidal" policy of the Japanese government.

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in one of the mandated islands. The accredited representative, M. Ito, said that "under the terms of the mandate the mandatory Power could not establish any military or naval base in the mandated territories entrusted to it," and that Japan would respect this obligation. The chairman of the Commission then informed M. Ito that it was reported from another source, which he did not name, that a naval base had been established. Moreover, he noted that no reference to the execution of the military and naval clauses of the mandate had been made in the annual report since 1925. In 1927, there had been a sudden rise in the expenditure for port improvements. M. Ito replied that the port improvements had been in the form of widening certain entrance channels, particularly the channel to Saipan, in order that vessels of larger tonnage might participate in the greatly enlarged sugar trade.[3]

The Commission was anxious, however, that a statement be made which would leave no ambiguity on the naval-base question. "A naval base might not be self-evident," and it would be well for M. Ito to state that the harbor works were intended only to promote mercantile navigation. Further discussion resulted in a promise by the accredited representative to ask the Japanese government to confirm the statement that no naval base was contemplated.[4]

On November 21, the Commission had under consideration certain observations which it proposed to make to the Council concerning the naval-base question. Although the text of the proposed observations is not given in the Commission's *Minutes*, it is clear from the discussion that the majority of the Commission was not satisfied that Japan contemplated no naval base. The late M. Van Rees, Dutch member of the Commission, persuaded his colleagues not to adopt the observations which they had under consideration, on the ground that to do so would give the impression that they openly doubted the good faith of the accredited representative. The matter was postponed.[5]

On December 1, M. Ito sent a letter to the chairman of the Commission in which he enclosed a declaration of the Japanese government that "it has never contemplated and does not propose to plan in the future the establishment of a naval base in the islands under mandate." The improvement of the port of Saipan, which was described in detail in the declaration, was solely for "economic purposes." The director of the mandates section of the Secretariat called the attention of the Commission to M. Ito's letter on December 3, and the Commission thereupon adopted an observation for its report to the Council to the effect that it

[3] *Permanent Mandates Commission, Minutes* (hereafter cited *P.M.C., Mins.*), 22, pp. 114–115.

[4] *Ibid.*, p. 115.

[5] *Ibid.*, p. 179.

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had noted the statement of the Japanese representative and the confirmation of such statement by the Japanese government.[6]

On January 24, 1933, the Council of the League adopted the report of the Mandates Commission without any comment on the denial by Japan that a naval base was contemplated.[7] The British Foreign Office, however, interested itself in the situation. A dispatch by Charles A. Selden on February 14 from London to the *New York Times* stated that, according to British opinion, the only authority which Japan has in the mandated islands is derived from the mandate granted to Japan by the Council of the League on December 17, 1920. The British government was also reported as holding to the belief that the withdrawal of Japan from the League would, if consummated, disturb the status of the Japanese mandate. The League would, the British government assumed, have full power to decide the new status of the mandate.[8]

Upon his arrival in New York on March 24, 1933, Yosuke Matsuoka, chief Japanese delegate to the League of Nations, stated unofficially that Japan would hold the mandated inslands, whether or not she remained in the League of Nations. On the same day, a dispatch from Geneva indicated that officials of the League took the position that Japan enjoyed no rights under the secret agreements preceding the Peace Conference, but that all her rights were based upon open agreements which superseded them. At the same time, it was stated on behalf of the State Department that the United States government adhered to the position which it had previously maintained that, as one of the victorious Powers of the World War, it would have to be consulted with reference to the disposition of mandates.[9]

On November 5, 1934, the Mandates Commission again raised the question of the building of naval bases. It quizzed M. Ito in a manner which clearly indicated that considerable credence was given the frequently repeated rumor that Japan was violating the mandate. It appeared that the expansion of harbor facilities had proceeded beyond all trade necessities, and that two airdromes had been constructed. M. Ito gave explanations and replies to the Commission's questions which seem not to have thoroughly satisfied that body.[10] To date, the Council has refrained from a discussion of the situation.

The two most important questions raised by the situation just described

[6] *Ibid.*, pp. 319–320 (letter from M. Ito containing the declaration of the Japanese government), and p. 299 (discussion in the Commission).

[7] *Official Journal*, 1933, pp. 187–192.

[8] *New York Times*, Feb. 15, 1933.

[9] *Ibid.*, Mar. 25, 1933.

[10] *Ibid.*, Nov. 6, 1934. *P.M.C., Mins.*, 26, pp. 90–94. In its report to the Council, the Commission indicated a belief that the expenditure on harbors was "somewhat disproportionate to the volume of commercial activity" (p. 206).

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are: (1) Upon what does Japan's tenure of authority in the mandated islands rest?; and (2) In case a naval or air base is constructed in violation of the documents governing Japan's tenure of authority in the islands, what are the possible courses of League action?

The answer to the first question seems to be almost beyond dispute, and may be stated briefly. Article 22 of the Covenant of the League purports to describe in general terms the authority to be exercised over the islands in question and other former German colonies and Turkish territories. It further sets forth the procedure by which the particular terms of this authority are to be determined. A grant of authority to govern the islands was made to the Japanese government in the mandate of December 17, 1920 and accepted by it. The mandate stipulated that "no military or naval bases shall be established or fortifications erected in the territory." Subject to the limitations imposed by the above and other provisions, the mandatory has "full power of administration and legislation over the territory . . . as an integral portion of the Empire of Japan." The position is untenable that the words just quoted override the specific prohibition of military and naval bases and fortifications.

It is necessary to examine briefly the assertion that Japanese rights in the territory rest on other documents than Article 22 of the Covenant and the mandate, and that the former documents may even justify a violation of the latter. The secret agreements of 1917 between Japan on the one hand and Great Britain and France on the other are claimed in some quarters to give Japan a more fundamental title than the Covenant and the mandate. An examination of these documents reveals that they contained mere promises of mutual support of certain territorial claims when they should be made at the peace conference.[11] At that conference, the promises were completely liquidated by mutual support of claims to mandates over certain territories, and they cannot now furnish a legal basis for any rights whatsoever.

But it is asserted that by virtue of Article 119 of the Treaty of Versailles,[12] Japan received a one-fifth portion of sovereignty over the former German colonies, and that she still remains in possession of this title. Such a claim is unfounded, in view of the fact that by all-around consent Article 22 was placed in the treaty as the method of liquidating the unworkable legal situation created by Article 119. In fact, Article 119 was placed in the treaty as a sort of legal bridge between the relinquishment of sovereignty by Germany and the coming into force of the mandates

[11] Texts in MacMurray, *Treaties and Agreements With and Concerning China*, II, pp. 1167–1168; *New York Times*, April 22, 1919, 2: 4–5.

[12] Article 119 provides as follows: "Germany renounces in favor of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions." These Powers were Great Britain, France, Italy, Japan, and the United States.

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system. Today nothing remains of the rights which Japan received by virtue of Article 119 except as they have been converted into rights under Article 22 of the Covenant and the mandate. The conclusion is, therefore, that Japan's tenure of authority in the mandated islands rests upon Article 22 of the Covenant and the mandate of December 17, 1920, and upon nothing else.

The second question is more difficult. It can best be answered by consideration of (a) the finding that a violation of the mandate exists; (b) the cancellation of the mandate in case of its violation; and (c) subsequent procedure.

No specific provision is made for determining whether a mandate has been violated. Article 22, par. 9, provides that the Mandates Commission shall receive and examine the annual reports of the mandatories and "advise the Council on all matters relating to the observance of the mandates." The clear implication is that the authors of Article 22 assumed the Council's supervisory power over mandates to extend to surveillance of their observance. The Council's consideration of facts tending to indicate the mandatory's non-observance of a mandate would seem clearly implied from these words and the general principles of the mandates system. It would appear from Article 5 that the Council could by majority vote appoint a committee to investigate this question.[13]

It is a problem, of course, whether the Council could, by less than unanimous vote, determine that a violation had occurred. The special importance of this problem lies in the fact that Japan could have prevented any such determination as long as she was a member of the Council, if unanimous vote is required. As there is no pertinent provision in Article 22, the matter has to be decided by reference to the general rule of Council voting. This general rule is that decisions are taken by unanimous vote except where specifically provided to the contrary or where "matters of procedure" are involved. Obviously, the finding that a mandate has been violated is not a matter of procedure, and would require unanimous vote. Therefore, a member of the Council would be in a position to prevent a finding being made against itself in its capacity as mandatory.

Now the question arises whether the Council could evade this abstractly undesirable position by receiving jurisdiction of the question of mandate violation under Article 15, with the mandatory a party to the dispute. In such event, the mandatory, though a Council member, could not have its vote counted in the determination of unanimity. If Great Britain, for instance, should have asserted that Japanese violation of the man-

[13] Article 5 provides: "All matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting."

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date had operated to release the British government from its obligation under the Washington Naval Treaty of 1922 (Article 19) not to establish naval and military bases at Hong Kong, etc., and a difficult diplomatic situation threatening a rupture should haven arisen as a result thereof, might not the British government have placed the matter in the hands of the Council? It seems clear that such a procedure would be perfectly possible. The vital question is whether the Council, in the exercise of its jurisdiction under Article 15, could hold the mandate to have lapsed or could cancel it. It seems that the wide scope of authority possessed by the Council under Article 15 can easily be interpreted to include such an action.

The coming into effect of Japan's withdrawal from the League places the problem in a new light. Now the Council could, by unanimous vote, cancel the mandate under the implied powers which flow from Article 22.[14]

Let us assume a violation of the mandate and its cancellation by one of the procedures outlined above. Then what might the Council do? It appears obvious that it might select a new mandatory and grant it a mandate. Suppose the new mandatory were met by forcible resistance by the Japanese government when it attempted to perform acts of government in the territory. It seems that any armed conflict in this situation would constitute aggression on the part of the recalcitrant ex-mandatory.

In view of the fact that the possibility of the construction of a submarine or air base in the Japanese mandated islands is a continuing cause of suspicion on the part of the United States and Great Britain, the alternative of some other mandatory suggests itself. An easy way to remove this potential cause of friction would be the transfer of the mandate from Japan to The Netherlands. A good local administration would continue in such an event, and the threat to the interests of other nations which is implicit in the possession of control over the islands by a strong naval power would be removed. The possession of a mandate in these islands by Great Britain or the United States would undoubtedly arouse Japanese antipathy, and the grant of a mandate to Germany would also be undesirable, in view of the fact that it might encourage the German government to argue for a strong navy. In the remote case that Japan ceases to hold the mandate over these islands, deference should be paid to the legitimate Japanese objection to the installation of a strong naval power in them.

LUTHER H. EVANS.

Princeton University.

[14] There is a large literature on this subject. See Quincy Wright, *Mandates Under the League of Nations* (Chicago, 1930), p. 519 ff.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The committee on program for this year's meeting of the American Political Science Association, to be held at Atlanta, Georgia, is as follows: Professors James Hart, Johns Hopkins University (chairman); Walter R. Sharp, University of Wisconsin; E. A. Helms, Ohio State University; Edward J. Woodhouse, University of North Carolina; and Benjamin F. Wright, Jr., Harvard University. The committee on local arrangements consists of Professors Cullen B. Gosnell, Emory University (chairman); J. Thomas Askew, University of Georgia; Irby Hudson, Vanderbilt University; John W. Manning, University of Kentucky; and Robert Rankin, Duke University.

Under the auspices of the Carl Schurz Foundation, Professor A. Mendelssohn-Bartholdy, at present lecturer on international law at Oxford University, delivered lectures at various American universities during the spring.

President Harold W. Dodds, of Princeton University, gave the Dodge lectures on the responsibilities of citizenship at Yale University on April 29 and May 6 and 13. His subject was "Modern Problems of Local Government."

Professor Frederick S. Dunn, executive secretary of the Walter Hines Page School of International Relations at the Johns Hopkins University, has been appointed professor of international relations in the graduate school of Yale University.

Following the installation of the new Philippine Commonwealth, probbably in November, Professor J. R. Hayden, who at present is vice-governor of the Islands, will return to his former position at the University of Michigan.

Dr. Charles A. Beard has been named honorary chancellor of Union College for 1935. In this capacity, he delivered the principal address at the commencement exercises on June 10.

Professor C. H. Driver, of King's College, University of London, has been appointed associate professor of government at Yale University. Mr. Driver was Rockefeller research fellow at Yale during the year 1932–33.

Professor George E. G. Catlin has resigned his position at Cornell University, and has returned to London, where he plans to continue his research and writing and also to take some active part in British politics.

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Dr. Ernest S. Griffith, professor of political science in the school of citizenship at Syracuse University and dean of the lower division, has been appointed dean of the graduate school of the American University, Washington, D.C.

During the spring quarter, Professor Herman Finer, of the London School of Economics and Political Science, offered courses on public administration at the University of Chicago.

Professor Thomas H. Reed's leave of absence from the University of Michigan has been extended in order to permit him to continue as head of the Municipal Consultant Service maintained by the National Municipal League.

During the later part of the past academic year, Professor Kenneth O. Warner was on leave from the University of Arkansas while serving as a field representative of the American Municipal Association in the states of Arkansas, Mississippi, and Louisiana.

Professor Lloyd M. Short, of the University of Missouri, will be visiting professor of political science at the University of Minnesota during the fall quarter, 1935–36, and Professor Thomas S. Barclay, of Stanford University, during the spring quarter, 1936.

Professors John M. Gaus, of the University of Wisconsin, and Marshall E. Dimock, of the University of Chicago, are serving as members of the committee on regionalism of the National Resources Board. Professor Gaus is chairman and Professor Dimock is conducting a study pertaining particularly to the Tennessee Valley Authority.

Professor Jeremiah S. Young, of the department of political science at the University of Minnesota, will retire from active service at the end of the fall quarter, 1935. He expects to spend part of each year in Florida and part in Minnesota.

Professor Oliver P. Field, of the University of Minnesota, will serve as lecturer in the department of government at Harvard University during the year 1935–36. He will give courses in constitutional and administrative law, taking over the work of Professor Henry A. Yeomans, who is to be on leave.

Professor Walter R. Sharp, who served as lecturer in the department of government at Harvard University during the year 1934–35, will return to his post at the University of Wisconsin in September. During the coming summer, he will be engaged in research in France.

Professors Charles E. Hill, of the George Washington University, and Charles E. Martin, of the University of Washington (Seattle), are ex-

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changing posts for the summer session of 1935. At the former institution, Professor Martin will conduct courses on the government of the United States and American diplomacy, and a seminar in international law and relations.

Dr. Max A. Shepard, instructor at Harvard University, has been appointed assistant professor of government at Cornell University. He will offer courses in modern political theory, comparative political institutions, and legal philosophy.

Professor Harold F. Alderfer, of Pennsylvania State College, has been employed by the American Municipal Association as field man with offices in Harrisburg, to give advisory service to cities and boroughs in Pennsylvania.

Professor Thomas S. Barclay, of Stanford University, is on subbatical leave during the spring and summer quarters of the present year. During the spring and early summer, he continued his research projects in the Middle West and East, and during the last half of the summer quarter, he will teach at the University of Washington (Seattle).

Professor Norman L. Hill, of the University of Nebraska, will conduct courses on European governments and international organization in the coming summer session of the University of Rochester.

Dean K. C. Leebrick, of Syracuse University, gave a series of lectures on international affairs in Honolulu during the second semester of the past academic year.

Dr. John D. Lewis, instructor in political science at the University of Wisconsin, has been appointed to an assistant professorship at Oberlin College.

Professor Benjamin E. Lippincott has been given sabbatical leave from the University of Minnesota for the winter and spring quarters, 1935–36. He will spend this time, and the following summer, in England.

Professor Walter Thompson, of Stanford University, is on sabbatical leave during the spring and summer quarters of the present year. He is spending most of his time in Wisconsin.

Professor J. Eugene Harley, of the University of Southern California, will give a series of addresses and lead a round table at the Institute of Public Affairs to be held in July under the auspices of the University of Denver and the Foundation for the Advancement of the Social Sciences.

Mr. Russell P. Drake, staff member of the Cincinnati Bureau of Governmental Research, has been engaged on a half-time basis by the depart-

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ment of political science, University of Cincinnati. Mr. Drake's work will be in connection with the program of training for public service.

Professor Graham H. Stuart, of Stanford University, has returned from an extensive trip in Europe, during which he interviewed some 140 American diplomatic and consular officers with a view to completing a study of American diplomatic and consular practice. During the summer of 1934, he gave a series of five lectures at the Hague Academy of International Law, and in the autumn a course of five lectures on American foreign policy under the auspices of the Carnegie Endowment in Paris.

The forty-first annual conference on government held by the National Municipal League has been scheduled for Providence, Rhode Island, on November 25–26.

Under the auspices of the American City Planning Institute, the American Civic Association, the American Society of Planning Officials, and the National Conference on City Planning, a conference on city, regional, state, and national planning was held at Cincinnati on May 20–22. Principal topics considered were: "Must American Cities Decay?", "The Planning Process as a Remedy," "The Rehabilitation of the Blighted District," "State Planning and Urban Communities," and "Federal Activities and Urban Planning."

The Norman Wait Harris Memorial Foundation will hold its eleventh Institute at the University of Chicago, June 24 to July 3, 1935. The topic will be "The Soviet Union and World Problems," and public lectures will be given by experts on the subject, both from Russia and from the United States. As usual, round tables for detailed discussion will be arranged for those with special qualifications.

The seventh annual Institute of Government was held at the University of Southern California on June 10–14. Sections were organized on federal administration, financial administration, legislative problems, planning, principles of government, public health, taxation, and a number of other topics, and section leaders included Professor Harvey Walker, of Ohio State University, and Dr. Henry Reining, Jr., of Princeton University.

An Institute of Politics was held at Bowdoin College on April 9–20. Lectures—followed in each case by a round table—were delivered by Secretary Henry A. Wallace, Hon. Ogden L. Mills, Messrs. Harold H. Barton and Matthew Woll, Professors Sidney B. Fay, of Harvard University, and Harold J. Laski, of the University of London, and Gaetano Salvemini, lecturer at Harvard.

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Mr. Anning S. Prall, chairman of the Federal Communications Commission, presented to the National Broadcasting Company on April 10, on account of the "You and Your Government" radio series, the award of the Women's National Radio Committee for the "best non-musical sustaining program" now on the air. In making the award, Commissioner Prall said that it was because of "the timeliness of the subjects, the wide range covered, and the impartial manner of presentation." The "You and Your Government" programs are sponsored by the Committee on Civic Education by Radio, and have been presented over a nation-wide National Broadcasting Company network for the past three years. The committee was established by the National Advisory Council on Radio in Education and the American Political Science Association, and since June, 1933, the National Municipal League has been a co-sponsor.

With "Social Planning in an Age of Conflict" as its general theme for lectures, round tables, and discussions, the Wellesley Summer Institute for Social Planning will hold its third annual session on the campus of Wellesley College. Professor Max Lerner, of Sarah Lawrence College, will again head the staff, and assisting him will be Mr. Willard Thorp, head of the Advisory Committee of the N.R.A.; Professor Phillips Bradley, of Amherst College; Mrs. Helen Everett Meiklejohn, of the San Francisco School of Social Studies; Mr. Alfred D. Sheffield, professor of group leadership at Wellesley College; and Miss Caroline Ware, director of the Consumers' Councils. The membership of the Institute is being recruited from men and women active in the business, industrial, and professional world.

The twenty-ninth annual meeting of the American Society of International Law, held at Washington on April 25–27, was devoted almost entirely to the subject of neutrality. Principal papers or addresses included: "The Neutrality of the Good Neighbor," James Brown Scott; "The Future of Belligerent Rights on the Sea," Fred K. Nielsen; "The Covenant of the League of Nations and Neutrality," Josef L. Kunz; "Neutrality and the Munitions Traffic," Edwin D. Dickinson; "Neutral Persons and Property on the High Seas in Time of War," Lester H. Woolsey; "Neutrality and International Economic Relations," John Dickinson; and "Neutrality and the Kellogg Pact," Henry L. Stimson. Among persons announced to participate in discussion of the papers were Edwin M. Borchard, Charles G. Fenwick, Manley O. Hudson, William C. Dennis, Herbert M. Briggs, Llewellyn Pfankuchen, Phillips Bradley, Clyde Eagleton, Charles Fairman, Lawrence Preuss, and John B. Whitton.

Ten of twelve students in the graduate course on public administration in the School of Citizenship and Public Affairs at Syracuse University

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received field appointments for further study in cities and states. They left to begin work on April 15, continuing in most cases until July 1. Each appointee was to engage in investigation, incorporating his findings in a thesis required for the course and returning to Syracuse later in the summer to submit his thesis and take final oral examinations.

During the fall semester, Colgate University will maintain a branch of its school of social sciences in Washington, D.C., in order to provide laboratory instruction in American government. The twelve members of the Junior class who have been selected to take this work will study courses in the political process, public administration, and Latin American history under the direction of Mr. Paul Smith Jacobsen, instructor in politics at Colgate. It is planned to supplement the regular lectures and reading assignments in these courses with instruction by observation, with each student assigned to a government office on an interneship basis.

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War Memoirs of David Lloyd George. (Boston: Little Brown and Company. 1933–34. Four vols. Pp. 469, 449, 596, 602.)

Mr. Lloyd George's *Memoirs* are as exhilarating as has been his career as a statesman. The memoirs here published cover only the war years and omit that period of youth, trial and error, and arrival at the heights of eminence which are psychologically the most interesting in assessing the character of a man. By 1914, Mr. Lloyd George was already a minister scintillating flamboyantly in the public eye, and his acts are public acts and part of the history of his country. He is material ready for "official history." When that stage is reached, most of the significance of autobiography is lost. It is better to consult the documents, and not the interpretation of them by interested parties. Of such documents, these volumes do not, on the political side, contain many of any startling novelty. The memoranda of Lloyd George, as minister of munitions, to Asquith, when war-premier, are among the most important and should be collated with the Asquith documents in the *Life of Lord Oxford* by Asquith and Spender.

No definitive judgment can be given on the military documents until the war memoirs and letters of various soldiers, especially those of Sir Douglas Haig, become available and until the army staffs, whose policies are here impeached, have had opportunity to make their rebuttal. Much has been heard about Mr. Lloyd George's "great cavalry charges across the bottom of the Caspian Sea," but what is required are detailed replies to the criticism of plans carried through with such immense loss of life—"on the one front where the altars were adequate to the immensity of the sacrifice."

The last volume is a sustained indictment of "mildewed strategic ideas," of the "dynamics of the hitting head against the tremendous wall." It is an embroidering of the theme stated in one passage: "The history of 1917 is one of our winning the war on sea in spite of the Board of Admiralty, whilst our generals were doing their best to lose the war on land in spite of the Government." If Mr. Lloyd George's criticisms are merited, Sir Douglas Haig deserved, not an earldom, but a firing squad, and in the days of the French Revolution he and his intelligence staff would have had one. If the comment be, "What, then, did Mr. Lloyd George do about it?," the answer lies in the establishment of that Supreme Command which demonstrates that even war can no longer be waged efficiently in the modern world, on any great scale, on a national basis.

If Lloyd George is a bitter critic of the intelligence and adaptability of the professional soldier, he is no less severe in his judgment of many politicians. Oddly enough, one of the kindest descriptions, obviously

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founded on personal attachment, is that of Bonar Law, a dour Canadian Scot doing his duty by his lights. President Wilson, who clearly did not awaken Mr. Lloyd George's affection, yet emerges better from this ordeal of scissors, paste, and ink than certain reviews have given ground to suppose. The determination of Wilson to honor his election pledge and keep America out of war, his pathetic anxiety to wage war only as a last resource, appears clear from the record.

The chief fascination of these memoirs is in the side-lights they offer. We have here the picture of Russia ripening for revolution—"many of the soldiers are without boots and have frost-bitten feet." Moscow rioters were crying: "You have no ammunition to fight the Germans, but you have plenty to shoot down the Russians." Meanwhile, the "brass-hats" and the "silk-hats" of the Allies came and went between St. Petersburg and Western Europe. The significance of the coming revolution remained undetected by their open but unseeing eyes.

The incidental sketches of colleagues and contemporaries—of Lord Balfour meeting trade union leaders during the war—are unforgettable. "He liked new experiences, but not of this sort. This was a portent which had for the first time appeared in the quarter of the sky where he had shone for a generation, and it came uncomfortably near." "The expression of his face was one of quizzical and embarrassed wonder." We are treated to pictures of Mr. Keynes "dashing at conclusions with acrobatic ease—"this rather whimsical edition of Walter Bagehot." Mr. McKenna is "a master of finance in blinkers—in Balfour's words 'an adept accountant'."

The volumes are, however, much more than a brilliant collection of *obiter dicta*. In them Mr. Lloyd George not only demonstrates his own rectitude against Asquith, Gray, and Kitchener, but reveals clearly enough the personal qualities that resulted in his reëlection in 1918 as "the man who won the war." Of these qualities, the chief may be described briefly as absence of respect for stucco idols. On the other hand, if ever a man was fashioned and damned by his own superior education, first under Jowitt of Balliol and then as a lawyer, that man was Asquith, an insufferable intellectual snob. At a time when officials in high places, confronted with the novel stress of war, were more concerned to defend their own official dignity than to win that war, Asquith was not the man to put through a policy of ruthless rationalization. He had himself too much respect for service men doing their jobs in the traditional way. Lloyd George had not.

From the point of view of the student of government, the main matter of interest in this entire work is the extremes to which official bureaucratic obstructionism can be carried even when the object in view is, not social reconstruction, but something as cogent, plain, and agreed upon as

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winning a war. It is a formidable documentation of the character of the official mind. It throws light upon the extraordinary inefficiency of bureaucracies, even when enjoying the support of the powers of a benevolent despotism or established autocracy, and upon the beneficent rôle of the professional politician in public life. The whole official system in Britain was suffering from arterio-sclerosis.

Just because his parliamentary success depended upon vitality, Mr. Lloyd George was able to put life and nerve into this war against the autocratic Goliath. Consideration of these facts would seem to indicate that democracies are, in fact, better adapted to wage successful war than dictatorships, save in their first flush of vigor. This conclusion is a highly important one for our age. These volumes not only are the memoirs of a great democrat. They do much to justify democracy as a resilient and effective system of government.

GEORGE E. G. CATLIN.

Cornell University.

Chester A. Arthur; A Quarter-Century of Machine Politics. BY GEORGE F. HOWE. (New York: Dodd, Mead, and Company. 1934. Pp. xxvi, 291.)

In the year 1879, Chester A. Arthur was the Republican boss of New York City, who had recently been removed by the President from the collectorship of the port. Two years later, he was President of the United States. It is as strange a tale as the course of our politics affords. Oddly enough, both Garfield and Arthur were delegates to the national convention which nominated them. "Looked upon, if not exactly as the wicked partner, at least as the poor relation in the Garfield and Arthur combination, he appeared to Godkin less vague and more courageous than his colleague."

Arthur was the son of a Baptist clergyman in New England. Educated at Union College, he later taught school at North Pownal, Vermont. Curiously enough, Garfield taught in the same town. Arthur studied law and moved to New York City, where for twenty-five years he was active in machine politics. "As a politician, he was brainy, thorough, careful, and devoted to research and minutiae." He was a person of gentility and moved in circles not always frequented by machine politicians. He joined the Century Club, where some of his fellow-members were William M. Evarts, John Jay, James C. Carter, Joseph Choate, George William Curtis, E. L. Godkin, Andrew D. White, J. P. Morgan, and William C. Whitney.

Although personally honest, Arthur had a stormy administration as collector of the port. Some of his subordinates were always in trouble. His deputy collector Lydecker complained that he had been charged un-

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justly with nearly everything "except stealing Charley Ross." Arthur's nomination for vice-president was a result of the attempt of the Conkling machine in New York to make Grant president a third time.

To many people's surprise, Arthur made a good president. In Matthew Arnold's phrase, he had "pleasant, easy manners." He was a Chesterfieldian character who moved about Washington with grace and good taste. He showed genuine courage in the performance of his public duties and genuine constructive sense, particularly as regarded the navy and the civil service. His was that strange thing—a government with an excess of funds. Two of his appointees to office were Elihu Root and Andrew Sloan Draper. Although to Henry Adams, Washington at this time was full of "confused politicians and idiotic society," Arthur thoroughly enjoyed being president. In the language of Speaker Cannon, "Arthur was defeated by his trousers," having acquired the undeserved reputation of being a fop.

The book is excellent. It is scholarly, well documented, discriminating, and well balanced. The English is of a quality rarely found in the writing of American history and biography, the narrative moving along in an interesting and attractive fashion, free from dullness and pedantic nonsense. In every respect, the workmanship is first class.

PAUL M. CUNCANNON.

University of Michigan.

The Effect of an Unconstitutional Statute. By OLIVER P. FIELD. (Minneapolis: The University of Minnesota Press. Pp. xi, 355.)

Some of the results of Professor Field's studies on the effect of an unconstitutional statute have been published during recent years in various legal periodicals. Six chapters of the present work are devoted to the useful purpose of bringing these articles together in a single volume. The new material, which constitutes about one-half of the book, includes in the Introduction a discussion of theories and in other chapters deals with *res adjudicata*, *stare decisis*, and overruled decisions in constitutional law, reliance upon decisions and the effect of overruling decisions, mistake of law and unconstitutional statutes, amendatory, validating, curative, and remedial measures, and judicial review as an instrument of government.

The discussion of theories of the effect of unconstitutional statutes justifies the publication of the results of the author's exhaustive investigation of opinions of state and federal courts. He clearly demonstrates the inadequacy of the void *ab initio* theory followed in numerous decisions and embodied in the statement of Justice Field that "an unconstitutional statute is not a law; . . . it is, in legal contemplation, as inoperative as though it had never been passed." This became the traditional theory, largely because of judicial review, which caused the judges to

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emphasize the constitutional pattern of our government to which they believed all statutory law should be made to conform. As difficulty was found in the logical application of the theory, courts were compelled by considerations of practical necessity and justice to make exceptions by enforcing other applicable principles of law which had the practical result of giving some effect to unconstitutional statutes.

In other cases, without abandoning the void *ab initio* theory, other views regarding the effect of an unconstitutional statute were evolved. One of these, the presumption of validity theory, presumes that the statute is valid and that legal effects may flow from it until it is declared unconstitutional by a court. Another, the case to case theory, regards a statute as valid under certain conditions and invalid under others.

The greater part of the volume is devoted to a discussion of the opinions in cases decided by the courts involving the matters dealt with in the several chapters. The author endeavors to discover the theory which has had chief influence upon the court and, where possible, indicates the weight of authority among the different jurisdictions. There are numerous cases in which strict adherence to the void *ab initio* theory has led to unjust results, but there is ample evidence of an increasing tendency to modify the doctrine by a consideration of the facts of the case and to use other theories to meet special circumstances or relations of parties. Naturally, there is considerable conflict and confusion in the law. The value of the work is increased by suggestions for changes in decisions or in statutes to meet the conditions created by the decisions of the courts.

While the general scope of the work is limited to the legal effects of unconstitutional statutes, the discussion of some of the cases is suggestive of the economic and political features of the problem. The political aspects are of significance in the chapters dealing with public officers, municipal corporations, government bonds, taxes, etc., under unconstitutional statutes. This is particularly true of the final chapter in which the defects in the operation of judicial review are discussed and stimulating suggestions are made for improvement in its scope and technique. Professor Field's work would be of the greatest value in a movement of this character, and his challenge should not be ignored.

ISIDOR LOEB.

Washington University.

Essays on the Law and Practice of Governmental Administration. EDITED BY CHARLES G. HAINES AND MARSHALL E. DIMOCK. (Baltimore: The Johns Hopkins Press. 1935. Pp. xvii, 321.)

This book is, "A Volume in Honor of Frank Johnson Goodnow, President Emeritus, Johns Hopkins University, Contributed by His Students

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in Grateful Acknowledgment of His Scholarly Inspiration and Counsel." It is a fitting tribute to that distinguished teacher, because the essays are at once timely, scholarly, and practical.

The essays are divided into four groups: (1) Origin and Meaning of Public Administration, (2) Executive Leadership in Administration, (3) Government in Relation to Industry, and (4) Control of Administration.

Under the first heading is a single clear historical essay of forty pages by John A. Fairlie. "Executive Leadership in Administration" embraces two essays, "The President and Federal Administration," by James Hart, and "From Political Chief to Administrative Chief," by George W. Spicer. Professor Hart concludes that (1) the presidency should be strengthened as the focal point of all policy determination; (2) legislation should outline the broad objectives around which presidential leadership has rallied popular support and leave to the President or his chosen subordinates the invention, selection, and experimental adaptations of means to these objectives; (3) a federal administrative court should be established with jurisdiction comparable to that of the Council of State in France, and (4) regulatory boards and commissions should be completely overhauled to separate legislative, administrative, and judicial functions.

Dr. Spicer's essay is an interesting, enthusiastic analysis of the reorganization of the government of Virginia whereby the governor became in fact the head of the administrative organization.

"Government in Relation to Industry" embraces three essays: (1) "Judicial Review of the Findings and Awards of Industrial Accident Commissions," by Charles Grove Haines; (2) "Retirement or Refunding of Utility Bonds," by Milo R. Maltbie, and (3) "The Scope of the Commerce Power," by Thomas Reed Powell. The first two are excellent essays, each in highly specialized fields; the third is of broad, general, social and economic interest. It ends with this striking sentence: "In looking toward the future, we must all be in the dark as to how wide national powers should be exercised, but only the blind need be in the dark as to whether wide national powers should be possessed."

"Control of Administration" likewise embraces three essays: (1) "State Control of Local Finance in Indiana," by Frank G. Bates; (2) "The Inadequacies of the Rule of Law," by Charles C. Thach; and (3) "Forms of Control Over Administrative Action," by Marshall E. Dimock. Professor Bates' essay is an admirable discussion of the Indiana plan. Professor Thach says: "There seems little to be gained in making loud and rhetorical complaints against bureaucracy, against administrative tyranny, against, in short, the total highly unsatisfactory condition of things. Such protests will actually achieve but little. The evident answer is, yes, the rule of law has broken down, in a field for which it was never intended. But the true problem is, what are we going to do about it?" He suggests

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as the probable answer the development of administrative courts.

Professor Dimock's essay on "Forms of Control Over Administrative Action" appeals peculiarly to this reviewer. "The surest road to administrative improvement is within the administration itself. . . . As public administration has progressed, executive, fiscal, and personnel controls have been improved. So has the caliber of public employees, the most important of all. . . . In the last analysis, the raising of levels of ability and of performance depends upon the organized interests and demands of public employees. The chief responsibility for making administrative improvement is theirs."

LEWIS MERIAM.

Brookings Institution.

World Politics and Personal Insecurity. BY HAROLD D. LASSWELL. (New York: McGraw-Hill Book Company, Inc. 1935. Pp. vii, 307.)

In discussing drifts and trends of our political affairs, University of Chicago publicists seem little inclined to limit their scope so definitively as do the juristic nationalists of Princeton, the agricultural bourgeoisie of Harvard, or the academic-administratives in New York City. In this excellently printed, tempestuous, and obstreperous volume, Dr. Lasswell leaps about the cosmos of sociological-psychobiological-obstetrical-psychiatric political science with the abandon of a flock of sparrows at a horse-show. The title may seem to include everything from here to there, but the book actually does so, and with a rattling fusilade of partially related footnotes.

The author seems to vary between developing a technique of method, or deciding as to alternative policies, or evaluating achieved results. This blurred effect is heightened by analytical-referential excesses under the pressures of change—data—perhaps concepts. On page 25, we are told that "new targets of collective action may emerge as diagnoses and presumptuous of anarchism, socialism, communism, liberalism, conservatism, republicanism, monarchism, pacifism, internationalism, nationalism, radicalism, individualism, collectivism proliferate." Capitalism, militarism, nihilism, proletarianism, and totalitarianism, *inter alia*, are mercifully omitted; but even so, the impression is of sagacious irresponsibility, like William E. Borah clerking in a mental canned goods chain store. Though not a study of Chicago local politics, the point of view is Hobbes on a hog basis. "The few who get the most of any value are the *élite;* . . . politics is the study of "who gets what, when, and how" (p. 3). One recalls the old farm-wife in Eggleston's *Hoosier Schoolmaster:* "Git a-plenty while you're gittin'." But "the politics of prevention" has to do with "mastering the sources and mitigating the consequences of human insecurity in our unstable world" (p. 26). Finally (p. 285),

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"politics is the management of symbols and practices related to the shape and composition of the value patterns of society." The concept appears to have shifted. Politics, thus defined, includes anthropology, culture, history, current events, philosophy, economics, government, and more.

The book has four parts: Method, Symbols, Conditions, Control. Method blocks out the author's "configurative analysis of the world value pyramid," while rather implying that there cannot be any such thing.

Symbols (pp. 27–138), may be sketched by saying that we seek identification because we expect violence while demanding security, equality, and supremacy, thus preventing what we wish and causing what we fear. (Hobbes again). Conditions (pp. 139–234), whether goods and services (economic), or migration, travel, and political attitudes (primary contact), or news channels and attention areas (secondary contact), or politics, personality, and culture (the specific American instance), are viewed as giving rise to symbols, thus reversing the sequence of Part II.

Part IV, Control, is aptly headed "In Quest of a Myth: The Problem of World Unity." The prerequisite (p. 237) "is a universal body of symbols and practices sustaining an élite," peaceful but wielding a monopoly of coercion rarely applied. This we are little likely to get, since (p. 285) "politics can assume no static certainty; it can strive for dynamic techniques of navigating the tides of insecurity generated within the nature of man in culture." Western Europe has known that since Aristotle at least, and the Chinese sages since time immemorial. What this book contributes is the author's modernist-cubist anfractuosities of dialectical metaphysic. It is hard to see how our universities can help our laboring, lumbering democracy by telling people what they know in language they will not understand, and burdened by a cluttering universality of casual allusion. There is an adequate index.

WALTER LINCOLN WHITTLESEY.

Princeton University.

The American Diplomatic Game. By DREW PEARSON AND CONSTANTINE BROWN. (Garden City: Doubleday, Doran and Company, Inc. 1935. Pp. 398.)

This book, written by two prominent newspaper correspondents, is a most absorbing one. Flippant in tone, choppy in style, exceedingly "jazzy" in spots, without the dignity or the paraphernalia of objective scholarship, it is nevertheless a contribution to the study of recent American diplomacy which scholars cannot afford to ignore. In five chapters, the authors deal, respectively, with the Kellogg Pact, Disarmament, War Debts, the Chaco, Manchuria, and the Economic Conference. The treatment in each case is essentially fair, quite accurate, and rich with such details (including probably some gossip) as only newspaper men can dis-

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cover. The result is an account that is actually quite revealing of the methods of diplomacy, of important policies begun through sheer accident, of bright hopes and courageous beginnings smashed through stupid blunders, of the intimate association between diplomatic policy and those persons immediately responsible for its formulation and execution.

Whether the authors intend it or not, the central theme of the book appears to be the faltering character of American post-war diplomacy. That theme is pretty well suggested in the opening pages, with a vivid account of the signing of the Kellogg Pact. The ceremonies were sufficiently impressive to suggest to a British journalist that the United States could never remain isolated and that "the Pact of Paris was the bridge by which it came back to coöperate with the world again;" whereupon a more skeptical Frenchman remarked: "But suppose America throws over the Pact of Paris as it did the League of Nations."

The account of the origin, negotiation, and development of the Kellogg Pact tends to support this theme of a faltering and uncertain foreign policy, and certainly explains the present futility of the Pact itself. The same theme persists in the treatment of the other subjects, in none more vividly than the chapter on the Chaco dispute, with its brilliant description of the jealousies between diplomats and of the numerous other cross-currents, both ludicrous and tragic, that prevented any effective settlement. The story of the Manchurian affair, without neglecting its broad lines, places considerable emphasis on such matters as the differences between Under-Secretary Castle and Dr. Stanley Hornbeck, on the social difficulties of Prentiss Gilbert in Geneva, on the jealousy of Gilbert among the career men, and on the extraordinary behavior of Dawes in Paris (rather aptly called "dunce-cap diplomacy)." The early enthusiasm of Franklin D. Roosevelt for disarmament, for genuine international coöperation, for the resumption by the United States of its Wilsonian position of responsibility in the world, is pictured as turning eventually into complete lack of interest and even to isolationism (pp. 334–389).

Many will differ with this conclusion, as well as with other details of interpretation in the book. Too much may occasionally be made of individual frailties and of relatively trivial incidents. There is an unjust slur on Minister Hugh R. Wilson (p. 310), one of the ablest and most sensible of American diplomats in Europe. There are some minor errors, such as referring to Prentiss Gilbert as "consul-general" at Geneva when he is only consul, and the consistent mispelling of the name of Raymond Robins as "Robbins." On the whole, the book is thoroughly "journalistic," yet a most useful and illuminating account of extraordinarily important events, with a wealth of detail that one does not find in the ordinary book on diplomacy or foreign affairs. It is so good that the lack of an index is

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the more deplorable. If there is a new edition, one ought to be added; for students of these events will want to refer frequently to this material.

CLARENCE A. BERDAHL.

University of Illinois.

Theodore Roosevelt and the Japanese-American Crises. By THOMAS A. BAILEY. (Stanford University: Stanford University Press. 1934. Pp. vii, 353.)

It is not recorded whether Theodore Roosevelt, in his later years, ever concluded that he had "bet on the wrong horse" in giving diplomatic support to the Japanese during the Russo-Japanese War. That war was scarcely over, however, when we had a Japanese problem of major proportions on our hands, and within two years the danger of war seemed so great that the "Big Stick" President felt certain that the only way in which to avoid it was to convince the Japanese that they could not beat the United States. Hence the world cruise of the American fleet.

Professor Bailey has given us a well-documented and temperate account of the events of this period, and their setting in the context of public opinion, with special reference to the state of feeling in California, where the problem was most acutely felt. The author points out that the actual merits of the case for excluding Japanese children from the regular San Francisco schools were pretty weak. But behind the school issue was the labor problem, as well as racial prejudice. Labor dominated the city hall. Furthermore, nearly a thousand Japanese coolies were arriving in San Francisco each month, in spite of the first "Gentlemen's Agreement" of 1900.

The President's "big stick" methods of dealing with the California situation come in for some sharp comment by the author, who feels that such methods were "more spectacular than effective." It was only after the President adopted greater finesse with the Californians, and worked out a trade with Japan on the basis of a revised Gentlemen's Agreement, in 1907, that the controversy in its 1906 form was liquidated. On the basis of gleanings from the files of the State Department, as well as from the Roosevelt and other personal papers, Professor Bailey is able to give a fairly adequate account of the negotiations leading up to the Gentlemen's Agreement of 1907, though the files themselves are apparently not completely documented as to details.

The author feels that Rooseveltian diplomacy was better adapted to the international than to the domestic field. Certainly the world cruise of the fleet confounded all the pessimists who saw in it provocation to Japan and a danger of war. By this dramatic gesture, Roosevelt achieved his objective of impressing the Japanese with the magnitude of American sea-power, and, by good luck and good management, this was done,

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ultimately, without offending the Japanese people. Indeed, the visit of the fleet to Japan took on the appearance of an act of courtesy rather than a veiled threat.

The bearing of our federal form of government on the conduct of foreign affairs is thrown into relief by this study. The question may well be asked whether it should be possible for one of our states to drag forty-seven others to the brink of war. Light is also thrown on the serious problem of the relation of public opinion, influenced by a nationalistic press, to delicate matters of foreign policy. It is significant that during this period the governments of both countries were apparently more moderate than their peoples—perhaps not too comforting a thought for good democrats.

GEORGE BERNARD NOBLE.

Reed College.

The Pipe-Dream of Peace; The Story of the Collapse of Disarmament. BY JOHN W. WHEELER-BENNETT. (New York: William Morrow and Company. 1935. Pp. xvi, 302.)

The problem of disarmament we have with us always and, notwithstanding its provocative title, Mr. Wheeler-Bennett, in this latest of a series, tells why it went from bad to worse between February, 1932, and August, 1934.

By contact, knowledge, instinct, judgment, and sound political sense, added to a dozen years of experience in exercising them, Mr. Wheeler-Bennett is perfectly qualified to tell with deadly accuracy the story of *haute politique* as it runs, giving it historical perspective and balance. In a felicitous style which sacrifices no accuracy of statement, the author weaves events, diplomatic action, and relevant national occurrences into an interpretative narrative that has no *lacunae* except those made by the actors in statesmanship. The net of the very complicated story is simply that France, which demands a security which she refuses to define, avoided granting to Germany the equality which she had to promise that country in 1932. The conference in 1934 had not got beyond the stage where each great state stubbornly advocated projects to increase its own forces advantageously. The deadlock had already encouraged rearmament. Mr. Wheeler-Bennett concludes that the removal of the "gangster element" from international politics is an essential condition of getting on. He refers to German policy, not losing sight of the fact that the French obsession has been the thing on which Hitlerism has cut its teeth in foreign relations.

This segment of Mr. Wheeler-Bennett's disarmament history is a steadily darkening one. Attempt after attempt to get together left the great states no nearer to each other and only served to bury details of

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their arguments. The narrative ends in August, 1934, a low point of disarmament fortunes. Events since then have been more reassuring; but it is a merit of Mr. Wheeler-Bennett's work that, whether events go up or down, this book can stand as a comprehensive story of two years of unprogressive negotiation.

DENYS P. MYERS.

World Peace Foundation.

International Economic Relations: Report of the Commission of Inquiry into International Economic Relations. (Minneapolis: University of Minnesota Press. 1934. Pp. ix, 397.)

In 1933, the Social Science Research Council sponsored an inquiry into the "directions and objectives" of the commercial policies of the United States and "their possible results in terms of the welfare of the American people." The Commission of Inquiry, consisting of prominent leaders in education, economic and social research, and business, under the chairmanship of President Robert M. Hutchins, of the University of Chicago, was asked to analyze the "problems involved" and to make "relevant recommendations." The result is a volume of four hundred pages.

Part One contains the Commission's recommendations. These are founded upon the premise that a freer "interchange of goods and services among nations" is essential to recovery. The Commission recommends specific measures to increase international political stability, to eliminate artificial barriers to trade and investment, and to coördinate those agencies of the national government involved in formulating and administering economic foreign policies. A few examples will suggest the spirit and scope of these proposals. We should coöperate with existing peace agencies, but should not guarantee the security of any foreign nation. We should reduce all tariffs and, wherever possible without seriously increasing unemployment, abolish them altogether. A "dismissal wage" is suggested tentatively as a means of compensating labor discharged as a "direct consequence" of tariff reduction. Reciprocity treaties to "enlarge rather than divert" trade are approved. The Tariff Commission should have "power to change tariff rates subject to congressional veto." A continued subsidy should compensate agriculture for industrial tariffs. But the government should not restrict agricultural exports or attempt to raise agricultural prices above the world level. The government should not restrict private investments abroad, but it should not protect investors. The Gold Purchase Act should continue in force, but the government should agree not to exercise the powers provided therein.

Part Two explains and defends the recommendations. This material somewhat overlaps the Report of the Research Director which constitutes Part Three. In this well-written report, Professor Alvin H. Hansen,

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of the University of Minnesota, explains clearly and concisely how we drifted into the present mercantilistic dilemma, and suggests how we may perhaps get out of it. He emphasizes one fact which spokesmen of the Roosevelt Administration have not stressed—that the recent devaluation of the dollar, by increasing the purchasing power of foreign currencies, has postponed the day of reckoning without in any way solving our international dilemma.

Part Four contains selected oral statements and written memoranda presented to the Commission. These deal with the theory of international trade, agriculture and the tariff, monetary problems, and political factors. Political scientists will find two of these essays especially significant. The one by Chester H. Rowell, editor of the *San Francisco Chronicle*, contains sound advice on the difficulties of translating *laissez-faire* economic theories into legislation in this country. The one by Professor Quincy Wright, of the University of Chicago, analyzes ably and concisely the international political implications of national economic policies.

The volume concludes with excerpts from the testimony submitted at the hearings in different parts of the country. One regrets that the Commission did not find it possible to print this evidence in full.

HAROLD H. SPROUT.

Princeton University.

The Great Wall Crumbles. By GROVER CLARK. (New York: The Macmillan Company. 1935. Pp. xvii, 406.)

Since the abdication of the Manchu dynasty, in 1912, many attempts have been made, by writers variously equipped for the task, to provide a satisfactory explanation of the many-sided Chinese problem. Among the works thus produced, the volume before us stands out as one of the best. Grover Clark has not written for the professional scholar or for the specialist on Far Eastern affairs; nor has he chosen to pose as a self-appointed advocate for China before the bar of world opinion. Without special pleading or display of scholarly paraphernalia, however, he has set forth, in somewhat less than four hundred pages, material which should enable his readers to understand the social structure of old China and—thus informed—to appreciate more clearly than would otherwise be possible the nature of the changes and conflicts occurring in the China of today.

Because of the fact that his book is intended for non-specialists, Mr. Clark felt it necessary to include in his opening chapters a brief summary of China's ancient history. Fully appreciating the difficulties inherent in such a task, the present reviewer feels that this is the one unsatisfactory section of the book. From this point, however, the author is on sure ground and is thoroughly the master of his subject. In the general ex-

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cellence of the last three hundred pages, two sections stand out as especially valuable for those seeking an understanding of China's troubles. In Chapter V—under the headings of "The Foundation of Power," "The Controlling Groups," and "The Technique of Justice"—Mr. Clark brings out in clear contrast the points at which Chinese political theory and practice differ from those of the West; while in Chapter XII the section on "External-Mindedness" makes all too clear one reason for the failure of so many of China's recently attempted reforms.

Sympathetic in his understanding of the problems by which the Chinese people are now confronted, Mr. Clark has an abiding faith in their ability ultimately to solve those problems and to assume once more, at some not-too-distant date, their rightful place among the great nations of the world.

G. Nye Steiger.

Simmons College.

The Juristic Status of Egypt and the Sudan. By Vernon A. O'Rourke. (Baltimore: The Johns Hopkins Press. 1935. Pp. 184.)

The legal position of Egypt and the Sudan has produced many controversies, which Dr. O'Rourke has attempted to solve in his well-documented analytical study. Accepting the interpretation of Professor W. W. Willoughby that a political entity possesses constitutional or internal sovereignty when it has complete control over its own legal competence and cannot be bound by any other political unit against its will, the author establishes criteria for analyzing the internal juristic status of a political entity. Following the same thesis, he asserts the inapplicability of this doctrine of constitutional sovereignty in international relations and adopts the use of the term "independence" to signify the possession by a political unit of internal sovereignty, and the freedom to engage in all international activities without interference from other states.

Applying these standards of constitutional sovereignty and external independence to Egypt, the author finds that from 1841 to 1914 the country was under the suzerainty of the Sultan of Turkey and that, although the legal tie between the two was at times extremely slender, Turkey retained full juristic sovereignty over Egypt until the opening of the World War. With the declaration of a protectorate, it is contended that Great Britain became the *de jure* as well as the *de facto* sovereign over Egypt—indeed, that she had exercised those powers even before the declaration. The evidence presented in support of this contention is ample and seems conclusive. With respect to the post-war situation, Dr. O'Rourke finds that, although by the declaration of March 14, 1922, Great Britain relinquished her protectorate over Egypt, British sovereignty was exercised until July 18, 1923, when British martial law was

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removed and the Egyptian government was left free to formulate a constitution. From the promulgation of the constitution of 1923 until the present, Egypt has possessed constitutional sovereignty. Although the author's study was apparently completed before the recent suspension of the constitution, it is doubtful if this would affect his conclusions. Contrary to quite a few writers, it is contended that "the capitulatory treaties and the legal systems devolving from them are not an abridgment of Egyptian sovereignty (pp. 88–89).

Concerning the external independence of the country, the conclusions reached are that Egypt is a "client" state of Great Britain, possessed of full internal sovereignty, but limited in international relations by ties with that Power which are valid in international law. This conclusion is supported by the facts of the superior and privileged position occupied by the British high commissioner since 1922 and by the limitation placed upon Egypt's external freedom by the British declaration of 1922. Nevertheless, the restrictions still permit Egypt to exchange diplomatic representatives and to conclude both political and commercial treaties not prejudicial to Great Britain.

The status of the Sudan involves many more legal inconsistencies than that of Egypt. Until the Mahdist uprising of 1883, Dr. O'Rourke contends that the Sudan was a part of the Turkish Sultan's dominions. That revolt brought about a change in status which finally resulted in the Anglo-Egyptian "reconquest" of the Sudan made definitive by the Anglo-Egyptian agreement of 1899. This agreement, the author states, placed the Sudan under the condominium of Britain and the Sultan of Turkey. Interrupted from 1914 to 1922, during which time Britain was the sole sovereign authority, this arrangement was resumed after 1923, with Egypt taking the place of Turkey; and it has continued to the present. Egypt's position, however, is only one of theoretical partnership, since for practical purposes British power in the Sudan is supreme.

Dr. O'Rourke makes a clear case for his contentions respecting the juristic status of Egypt, and one amply supported by evidence. His case is less clearly stated with respect to the Sudan, where there seems to be a tendency to confuse legal theories with political practices. But on the whole his book forms a distinct contribution to the literature dealing with those political entities whose sovereignty is clouded and which so often become a matter of inconclusive dispute.

WILLIAM C. JOHNSTONE, JR.

George Washington University.

The Freedom of the Seas. BY EARL WILLIS CRECRAFT. (New York: D. Appleton-Century Company. 1935. Pp. xx, 304.)

This is a timely book. It should deepen the interest in neutral rights

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and obligations aroused by John Bassett Moore with his article on "An Appeal to Reason" in *Foreign Affairs* for July, 1933, and by Charles Warren with his article on "Troubles of a Neutral" in the same periodical for April, 1934. These articles spurred the investigation of neutrality by the Department of State and will no doubt bring an early report to Congress. Professor Crecraft acknowledges his indebtedness to both articles, especially to the one by Judge Moore. Professor Borchard writes an eminently fitting introduction to the book.

The chapter on "Defeats in Diplomacy" characterizes the Treaty of Ghent as a complete failure, because it did not settle the issues of the violation of maritime neutrality that brought on the War of 1812, and also the Treaty of Versailles, because it omitted stipulations on the second of Wilson's Fourteen Points, the freedom of the seas. "Food and Fleets" supports President Hoover's statement of November 11, 1929: "I would place all vessels laden solely with food supplies on the same footing as hospital ships." Professor Crecraft comments: "Regardless of time, the Hoover suggestion is destined to cut its way through the mists of public opinion." He thinks this theory should replace the well established rule of war of 1756, the rules of continuous voyage and ultimate destination, and the partially established rule of ultimate consumption.

In "Submarines and Security," the author solves the problem of the submarine by advocating that merchantmen be not permitted to arm and that food blockades be prohibited. "Commitments to Consult," he holds, place difficulties in the way of obtaining a settlement of freedom of the seas. "The Dinotherian Doctrine" is defined as that of putting teeth in international agreements, such as Secretary Stimson's efforts with the Kellogg Pact. Professor Crecraft's view is that such efforts revive the "notion that when war exists, all nations are enemies. Under such extinct theories, there can be no neutrals." The chapter on "Sanctity of Sanctions" examines the coercive features of the Covenant, and the author concludes that the League of Nations is an alliance of the Allies to enforce the provisions of the Treaty of Versailles. "The Policy and Price of Naval Parity" would, he thinks, pledge America to a naval program which would come near to renouncing independence itself.

The theory that runs through the book is that by entering the war in 1917, America incurred heavy losses compared to a situation under the maintenance of neutrality. Consequently, we should revise the rules governing neutrality so as not to be drawn into another similar conflict. Few readers will agree with all of Professor Crecraft's conclusions. But the reader who believes that peaceful relations rather than those of war, that the interests of neutrals rather than those of belligerents, should grow will want to refer to this book repeatedly.

CHARLES E. HILL.

George Washington University.

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Cromwell; Vier Essays über die Führung einer Nation. By Hermann Oncken. (Berlin: G. Grote Verlag. 1935. Pp. vi, 147.)

Der individualistische Staatsbegriff und die juristische Staatsperson. By Reinhard Höhn. (Berlin: Carl Heymanns Verlag. 1935. Pp. xi, 235.)

Mensch und Gesellschaft im Zeitalter des Umbruchs. By Karl Mannheim. (Leiden: A. W. Sijthoff's Uitgeversmaaatschappij. 1935. Pp. xviii, 207.)

At first glance, these three books seem to deal with widely different topics: Cromwell—enigmatic and still "unknown," as F. H. Hayward maintains in his recent volume on the "greatest of Englishmen" (1934); the "individualistic" concept of the state; and "man and society in the age of reorientation." But on closer analysis all three focus on one single problem—that of political leadership. No problem is more acutely real in present-day Germany, none more of a challenge to the German scholar. Is the challenge accepted, or is the issue dodged? Here, again, is a common element, a common standard of evaluation. The question which will at once come to the mind of the American student of politics is whether scientific approach is reconcilable with the implications of the National Revolution.

To Hermann Oncken, the distinguished historian, the answer is clear and simple. Science is one thing, ideology another. Ideologies may change, but science, in majestic impermeability, remains the servant of the truth. In the preface to his "four essays on national leadership," Oncken openly refers to the "most curious shifts" which German history is undergoing "today in many minds" (p. vi). More than a century ago, Johann Gottlieb Fichte, in his "lectures on the destination of the scholar" (1794), exhorted his students in Jena: "The nobler and better you are yourselves, the more painful will the experiences be which fate has in store for you. Do not let this pain overwhelm you—conquer it by deeds!" When Oncken early this year, provoked by semi-official comments on the "curse of objectivity," dramatically broke off his lectures at the University of Berlin, he did what Fichte had in mind. His book on Cromwell, based on years of research and written with superb elegance, is another effort to "conquer pain by deed." Broader in approach than John Buchan's biography, published almost simultaneously, it is virtually a vigorous counter-attack on the new vogue of one-sided "historical reinterpretation." And while the author advises the German public, well-versed in the art of reading between the lines, not to draw "parallels such as are conceivable" (p. 29), his masterly case study in political leadership, pregnant with unsought implications, testifies to the strength of a tradition which, it is hoped, will never be subdued. Oncken pictures the Protector as a chosen people's chosen leader whose deep religious faith on the one hand and whose sense of reality on the other accounted for the peculiar combination between his naval policy and his vision of a Protestant world alliance. Of particular

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interest are some twenty pages of abstracts from the hitherto unpublished diplomatic records of an embassy which the state of Oldenburg sent to London in 1653–54.

In his "historical-dogmatic inquiry into the concept of the state," Reinhard Höhn sums up his findings in the statement that the construction of the body politic as a legal entity is of "distinctly individualistic" origin, and hence "for our time, which recognizes *Volksgemeinschaft* as a principle of law, no longer of use" (p. IX). Indeed, if the state is a corporate body, even *Der Führer* "by necessity" will be nothing but merely an organ of the state, which would deprive the notion of leadership of "all its contents" (p. 227). It may be unfortunate for those who consider such a conclusion intolerable that the author does not undertake to clarify dogmatically the scope and the juristic function of the term *Volksgemeinschaft*. Others, less sensitive, will probably appreciate the fact that these considerations are only trimmings to a thorough and substantial, though occasionally repetitious, historical survey of the conceptual development of the State. The evolution is followed through from the Italian Signoria to Machiavelli and Botero, from Bodin to Richelieu and Louis XIV, from the Great Elector to Frederick II, from Clapmarius, Arnisaeus, and Conring to the natural-law literature including Kant, Höpfner, and Hufeland, leaving off with Albrecht (1837). Höhn's main thesis is that *stato* meant originally simply the governmental apparatus of the ruler; that this concept later gave way to the idea of an invisible *Staatspersönlichkeit* which basically preserved "individualistic" features up to our day, although with the rise of "enlightened monarchy" collectivistic thoughts began to pervade it "to some extent." The Third Reich, then, has to blaze a new trail. Such a result may not quite accord with Carl Schmitt's recent *rapprochement* toward the theory of the Signoria. Moreover, its plausibility rests with the author's determination to discard completely the era of democratization.

To Karl Mannheim, the well-known sociologist, "the history of liberal mass society has arrived at a point where further drift will lead to destruction" (p. 90). The "disproportionality in the distribution of rational and moral forces" is no longer tolerable in an age marked by the widest extension of equal suffrage on the one hand and social interdependence on the other (pp. 18–19). The author does not confine himself to an illuminating discussion of causes; turning to cures, he reinterprets political leadership in terms of planning. In fact, the larger part of the book, which is dedicated to Mannheim's "teachers and students in Germany," is taken up with a reconsideration of the premises of *Planung*, which the author characterizes as an intellectual process, namely, to conceive methods by which the modern state can adapt itself to social interdependence (p. 197). In scrutinizing the obvious cleavage between "liberal

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mass society" and intellectual processes, Mannheim seems inclined to over-estimate the rôle of reason as an adjusting element. Except for this bias in favor of rational solutions, which many will deem a virtue, the presentation is as detached as it is stimulating. It is gratifying that the publishing house of Sijthoff in Leiden is sponsoring the works of German scholars whom "reorientation" has sent to Coventry.

FRITZ MORSTEIN MARX.

Princeton University.

Morals and Politics. By E. F. CARRITT. (New York: Oxford University Press. 1935. Pp. 216.)

There is much sound sense in the pages of this little book. Mr. Carritt, fellow of University College, Oxford University, and lecturer in philosophy, takes for his object to show that all attempts to explain the recognition of political obligations in terms of something else, such as contract and general or real will, by writers not content to treat obligations and rights as in themselves realities, "lead to confusion, self-contradiction, and the evident misdescription of facts we cannot doubt." Obligations and corresponding rights are facts to be recognized by all who reflect—an "obligation" as the weightiest and over-ruling of various "responsibilities" which may conflict with each other, just as a "right," unless in some particular it is the sole "claim" to right, is the dominant of various other such claims.

The author's method is to analyze the views of thinkers of the past, especially of the recent past—Hobbes, Spinoza, Hume, Rousseau, Locke, Kant, Hegel, Green, and Bosanquet; then, in a briefer Part II, to indicate his more positive considerations on political, as part of moral, obligation. The historical part is no mere group of interesting observations about philosophy and philosophers. Nor, again, is the progress of thought related to institutional growth—useful in its place though such consideration must be—not seen as participating in the march of history. Rather are analyzed the views of thinkers as living in one great community, some the children of others, the author, too, finding and giving something of his own. Sufficiently rare, assuredly, is this grappling with the substance of philosophy, avoiding equally the superficialities of the numerous commentaries upon commentaries, and, again, such arid disregard for the possibilities of generalization as characterizes not a little of the present day inductive scholasticism.

With a degree of admiration for T. H. Green, despite his logical inconsistencies, and with possibly a too Lockian conception of liberty, the author settles upon a position resembling that of the utilitarians, "but with an important difference." For while they would consider as right grounds of duty only "the amount of happiness likely to be produced by any action either by itself, or as part of a plan, or as an example for other

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actions of a law-abiding sort generally felicific," it is urged that we do in fact sometimes recognize obligations upon a different ground—that obligation rests actually upon a choice among responsibilities, which choice involves consideration of what contributes either to the general human well-being or to justice or both. Of the relation of these to each other, an idealist might ask for more than he finds in these pages; yet there is ample to indicate how analysis of concrete situations may be seen to support a fairly Kantian view. The author concludes with Kant: "We are inevitably reduced to disparate conclusions if we deny that pure principles of right and justice have objective reality and are therefore capable of being followed. . . . A true theory of politics must begin by doing homage to moral obligation" (*Perpetual Peace*, Appendix I).

WALTER SANDELIUS.

University of Kansas.

Government in Transition. By LORD EUSTACE PERCY. (London: Methuen and Company, Ltd. 1934. Pp. 250.)

This most recent of Lord Eustace Percy's ventures into full-length political pamphleteering[1] is an important guide to what a great English party is thinking. For Lord Eustace Percy typifies (as he sometimes leads) the "young Conservatives" in the House of Commons, and it is the "young Conservatives" who serve as the "ginger group" of their party, just as the Socialist League agitates Labor and Mr. Lloyd George prods Liberalism.

Just as writers on political science of the type of Hobbes, Hume, or Graham Wallas, started with a psychology, so Lord Eustace, following a different fashion, starts with an economics. It is that of a well-read amateur. In these days when professional economists find difficulty in guessing right, perhaps an amateur's guess is as good as any; although one might experience doubts on discovering that Lord Eustace adheres to J. S. Mill's wage fund theory and bases a long argument on an assumed equation of price which omits at least one factor from the commonly accepted formula. Suffice it to say that from much the same world conditions from which many economists deduce a potential plenty, and Major Douglas a superfluity, of goods, Lord Eustace Percy deduces an inevitable scarcity.

The author believes that England will inevitably become poorer because its population is declining: a declining population will be accompanied by an enforced decrease in individual specialization by workers, and a decrease in specialization will result in the impoverishment of the community. He also expects a practically "stationary state," in which the

[1] His other important Conservative tract, *Democracy on Trial* (1931), was reviewed by E. P. Herring in this REVIEW, Vol. 26, pp. 170-171.

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return on capital will be greatly lessened. The present economic depression, therefore, is unique because it comes at the end of a long period of "economic progress as a 'normal condition' " (p. 66). In the next stage, every one is going to be rather worse off, but apparently that is all right as long as all are worse off together.

In this difficult situation, Lord Eustace feels that a positive policy is necessary. Though he admits that the future will see a great extension of state control over the industries concerned with the necessities of life, he wants a "resurrection of the individual" and a wider distribution of private property, rather than conscription of labor which, he believes, the Socialists desire. He also wants simplification of governmental machinery, particularly simplification of administration as it affects the relations between central and local authorities, and as it affects the individual citizen.

A section of the book is devoted to suggestions for a reorganization of Parliament, and there are three detailed discussions of particular problems in housing, education, and unemployment. Lord Eustace's strong plea for local support of primary schools indicates why he was considered, when President of the Board of Education, an opponent of popular and democratic schooling. He approaches the problem of unemployment relief with the belief that unemployment is bound to increase, or at least to stay constant, and that the national income which can be taxed for its relief is bound to diminish. As a solution, he suggests that laborers contribute labor, and capitalists goods and machinery, to manufacture products to be *given* to the unemployed, who would thus be usefully segregated from the economic life of the rest of the community.

Those are only examples, though the most significant examples, of the author's proposals. But *Government in Transition* is hardly a consistent and detailed program for action. It is rather a pamphlet with a moral purpose, which is revealed in the final chapter entitled "The Spirit of the New Era." This chapter discusses the necessity of the community's having a higher moral tone, and sounds like an English version of some of the ethical justifications for Fascism. Lord Eustace condemns Communism, writes off Hitlerism as misguided and silly, and indulges in two pages of warm defense (pp. 219–221) of Mussolini's Italy. It is perhaps significant that he says, earlier in the book, that if England has a revolution, it will be Fascist.

E. P. Chase.

Lafayette College.

Valeur de la Liberté et Adaptation de la République. By Joseph-Barthélemy. (Paris: Librairie du Recueil Sirey. 1935. Pp. vi, 262.)

When John Stuart Mill, who ought to be regarded as the modern pa-

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tron saint of all students of the subject of liberty, suggested that "on all great subjects much remains to be said," he surely did not mean that about a thing like liberty new vital facts can be gathered and added to the existing store. Since he almost certainly meant that value attaches to a reformulation of the problems of liberty as such, he implied that the qualifications of the person who undertakes such reformulation are of paramount importance. In France, Professor Joseph-Barthélemy possesses unique qualifications for such a task. As a result, his recent book on "The Value of Liberty" has a peculiarly strong claim upon the interest of people in all countries. The author is a professor of constitutional law who has had extensive experience in practical politics. He is a member of the Institute, has served in the Chamber of Deputies, and has represented France in the Assembly of the League of Nations. It is said that the president of the Chamber of Deputies acted without precedent when, at the opening of Parliament in January, he took occasion to pay a personal tribute to M. Joseph-Barthélemy.

Professor Joseph-Barthélemy's unique combination of qualities is of especial importance in view of his suggestion early in his book that liberty must be felt rather than defined; for his unusual distinction is what gives weight to his firm faith in liberty. Liberty, he is sure, is the condition of democracy; and he is confident of the superiority of democracy to all other régimes. In the disturbing conditions of the present day, this faith and this confidence are too striking to require emphasis. Moreover, the book is far from being confined to sentiment and to theory, important as these are. Many chapters are devoted to recent developments in France and to the question of constitutional amendment. Most of the author's views concerning the "Doumergue constitution" are familiar to readers of *La Revue politique et parlementaire*. They are reproduced in the present work, frequently in substantially the same form, though sometimes with further elaboration. Discussion of matters like the judicial system, the process of forming ministries, the referendum, and the electoral system is an important and interesting addition. Everything is treated with the author's usual wealth of anecdote and historical allusion and in his inimitably brilliant style.

R. K. Gooch.

University of Virginia.

The Communist Answer to the World's Needs. By Julius F. Hecker. (New York: John Wiley and Sons, 1934. Pp. xii, 323.)

Communistic rationalization is as muddled, the bulk of it, as it is extensive. And unless truth be not a value, this fact demands more emphatic statement than has been given it. Not that the fault is unextenuated. It is, in fact, the predictable product of (1) the need to rationalize, due

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partly to instinct, partly to hostile ideologies which must be answered, and (2) the indicated inability of any vital movement to discern, conceptually and definitively, its goal. Nevertheless, there is better and worse thinking. And it is not clever to over-rationalize Communism considered as a doctrine of ends, for intrinsic worth is scarcely within the pale of discursive thought. On the other hand, considered as a science, specifically as a guess that the root evil of the bourgeois socio-economic system is the profit element, Communism is best substantiated by experts not rhetoricians. The friends of Communism may indeed deplore the harm done it by impossible logic and inexpert testimony. The outstanding fact, however, regardless of its possible extenuation, is that the intellectual output of members of the Communist party is not respectable.

Briefly to sustain the indictment. To say that all ideologies but Communism are sophistry, for to Communists alone is granted disinterestedness of insight—a position as common as it is vicious and logically indefensible; and yet to deny freedom to art and thought generally on the ground that pure art and truth are fictions. To add that in fact the trouble with bourgeois thought is that it is speculative and metaphysical, and not to see that Marxism is just that. Simultaneously to affirm free will (in order to call forth individual effort) and an evolutionary determinism climbing to Communism (to encourage the faint-hearted). To refute all opponents by labelling them bourgeoisie—as Americans use the word "red." By the principle of dialectic materialism, i.e., the unity and penetration of opposites, to solve all problems; particularly just such contradictions as have been cited.

The present book is the occasion for the foregoing diatribe. It attempts ostensibly an objective account of present-day Communism's interpretation of itself and related phenomena, such as Fascism, the New Deal, social planning, Japanese imperialism, etc.; the form being a series of dialogues between a Russian exponent of Communism and a group of visiting Englishmen and Americans, each representing some socio-economic point of view. But the visitors are shown as incapable of seeing beyond their respective noses—only the Russian is a sage. Facts are distorted and magnified to demonstrate Communistic theses. The closing is typical: a letter written in thanks to the host and concluding, ". . . Reason might tell us that we should follow your example and appeal to our toiling masses forcibly to remove the obstacles which evidently block the way to recovery and progress of the nation. Will we do it? I doubt it. There is something of an organic necessity which keeps us inert. You will probably call it our class interests. Let that be as it may. We cannot bite the hand that feeds us. We must remain true to ourselves." Need more be said?

L. M. Pape.

University of Chicago.

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Fascism and Social Revolution. By R. Palme Dutt. (New York: International Publishers. 1934. Pp. xi, 296.)

The author's main thesis is that, according to the laws of Marxist dialectics, our capitalistic society is doomed to perish because it has reached its last stage, the period of monopolistic finance capitalism, which, excluding free trade and competition, checks and destroys the productive forces of the economic system, creating an ever-growing misery in the masses. The only cure for this disastrous situation would be the Communistic economy of Soviet Russia, whose accomplishments Mr. Dutt admires without the slightest qualification. The capitalistic forces, however, are not willing to abdicate, and therefore by an excessive demagogy, and with the help of private armies, introduced the various forms of the Fascist system, the real meaning of which is the abortion of social revolution, and the destruction by violence of the organizations of the working class. Those countries which are still more or less free from the Fascist system stand before the alternative either of carrying on victoriously the social revolution or of lapsing into Fascism, which is "the punishment of history" for the weakness of the proletariat, and is therefore "the weapon of history for purging and burning out this weakness."

The author has supported his thesis with innumerable facts and quotations from all corners of the world in the almost religious fervor and dogmatic certainty of an orthodox Marxist. If the facts do not yield to his deductions, he always finds the necessary qualifications. For instance, Scandinavia, Belgium, Holland, Switzerland, become simply satellites of the imperialist powers.

The reviewer believes that the critical part of the book, showing that the Fascist system is not a solution of the social problem, that the much vaunted coöperation of the classes is only a hypocrisy invented by the dictators, that the so-called planned economy is only a random experimentation for avoiding bankruptcy, that Fascism leads to moral and intellectual degradation both of the rulers and the ruled, and that the final outcome must necessarily be war, is in its essence well founded and conclusively demonstrated. The analysis, however, of the causes of the movement, and its possible consequences, is lamentably one-sided, and often erroneous. The author sees in Fascism only a counter-revolutionary manoeuvre of the big capitalists (which it surely was, to a considerable extent), but he does not realize that it was at the same time a reaction of vast masses of the population against Bolshevism, of millions of independent peasants who were not willing to become *kulaks*, and of a white-collared proletariat which was unwilling to abdicate its intellectual independence. (How far they were deceived in this intention is another question.) Furthermore, the author has no idea that Fascism is not only a counter-revolution, but almost a photographic negative of Bolshevism, which shows that the

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ruthless extirpation of economic independence, moral and intellectual freedom, must lead to very similar consequences, however different the motivation of the dictators may be. This limitation of vision in such an acute observer as the author in many respects is, is due not only to his excessive dogmatism, but to duplicity in his moral values. He challenges with the utmost indignation the suppression of individual freedom and the brutal war spirit in Fascism, but he does not even mention that similar tendencies are prevalent in the Soviet Union.

OSCAR JÁSZI.

Oberlin College.

Le Siècle du Corporatisme. By MIHAÏL MANOÏLESCO. (Paris: Felix Alcan. 1934. Pp. 376.)

This is a significant and suggestive contribution to the analysis of recent trends in political organization. The author is a former minister and professor of political economy at the Polytechnic School of Bucharest. He advances the thesis that the twentieth century will be the century of the corporate state, as the nineteenth was the century of liberalism. This will be the inevitable result of historical factors. It need not come about by revolution as in Italy; and Italian Fascism is only a partial system, in which the corporations are subordinated to the state. Corporatism pure and integral will be based on autonomous corporations which will control the political state.

A basic distinction is made between economic and non-economic corporations. In the former class are those dealing with agriculture, industry and arts, commerce, credit, coöperatives, transport, and public services. The latter will include the church, the army, the judiciary, science and the arts, education, and public health. The economic corporations will be organized on a basis of equal representation of the "patrons" and the salaried and wage-earning groups, with national, regional, and specialized units. The organization of the non-economic corporations will vary—the army will be centralized, the judiciary decentralized.

Formed by a combination of these autonomous corporations, the corporate state will have direct control over national defense, foreign policy, and internal order, and will act as an arbitrating and coördinating agent in relation to economic, "cultural," and public health functions. The parliament will be composed of delegates from the major corporations, preferably in two chambers—one of the economic corporations, and one of the non-economic. It will be limited to legislative functions, but with control over the executive. Preferably there should be a monarchical head of the state, who will select the head of the government, who in turn will name the heads of departments. The latter may be dismissed by a majority vote of the parliament, but the head of the government may be

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removed only by a two-thirds vote, qualified by the power of the head of the state to dissolve the parliament.

One vital problem the author does not attempt to solve—the basis of representation in the parliament. He holds that no one corporation should have a majority; but the relative weight will be the result of an "*appreciation d'ensemble*," based on the importance of the different functions and the competence of each corporation. Nor does he propose any constitutional machinery to determine these criteria of importance and competence.

A bibliography of French, German, and Italian works indicates an extensive body of literature in this field. There are no references to works in English, nor to steps in this direction reflected in the New Deal agencies in the United States.

JOHN A. FAIRLIE.

University of Illinois.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

Business and Government (The Foundation Press, pp. xi, 729), by Charles C. Rohlfing, Edward W. Carter, Bradford W. West, and John G. Hervey, is primarily a text-book for classes in political science in which the purpose is to keep strictly within the field of government while stressing the relation of government to economic problems. There are twenty-seven chapters in all, each being followed by a brief bibliography and a list of questions for classroom discussion and reports. The chapters cover such matters as constitutional protection of business, business pressure groups, the anti-trust act, control of unfair trade practices, self-regulation in business, railway control, public utilities, the Federal Securities Act, taxation, public expenditures, bankruptcy, labor problems, labor disputes, unemployment, workmen's compensation, the National Recovery Act, and crisis legislation. In handling most of these topics, the legal approach is kept prominently in view; for, as the authors themselves explain, the student's preference is for the legal, rather than the economic or sociological, approach. Apparently this has been the assumption throughout the entire book. The class-room student will probably be critical of the book because it does not contain a copy of the Constitution, because it does not contain more actual facts about the business world, and because the questions for class-room discussion are not more carefully geared with the text. All in all, the volume will be very useful for political science teachers and students alike. It is timely and up to date. It is well organized. It has substance. It includes many important citations, thereby recommending itself to those instructors who desire to

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remain clearly within the field of government while offering courses on "business and government." In other words, the book explores no borderline territory which separates the fields of political science and economics. It is, undoubtedly, an addition to the growing list of materials which can be used by departments of political science in offering a course on the rôle of government in the field of business.—E. W. CREGRAFT.

The public officials, business men, labor leaders, and social scientists whose addresses are published in the *Annals of the American Academy of Political and Social Science* for March, 1935 (Vol. 178, pp. 1–248) agree that there is "Increasing Government Control in Economic Life," the title given to this number of the *Annals*. That is practically the extent of agreement among these able spokesmen for the various philosophies competing for acceptance by persons who feel some obligation to participate intelligently in the solution of current political and economic problems. Lewis Corey announces that "capitalism must decline and decay." John Spargo argues that "we can have recovery if we aim at it, but we cannot have remodeling of our system on new and untried principles at the same time." Donald Richberg defends the concept that "under the auspices of a democratic government there can be organized a plan for industrial self-government . . . with the government acting not as a dictator but as a moderator." A. A. Berle, Jr., outlines the New Deal's attempt "to do something toward creating or recreating economic liberty." The section dealing with the relation of the government to economic security and the papers on social insurance presented to the Pacific Southwest Academy constitute an illuminating symposium on this complex subject. Finally, and as an indication of the balance maintained by the editor, Thorsten Sellin, between the contending schools of thought, Samuel O. Dunn pleads for a modified *laissez-faire*. "The issue with which we are confronted," he says, "is not that of conservatism versus liberalism. It is that of state-ism versus liberalism."—HOWARD WHITE.

To the earlier work of several well-known writers covering the history of national administration in the United States during the revolutionary and confederation periods, Jennings B. Sanders, in his monograph entitled *Evolution of Executive Departments of the Continental Congress, 1774–1789* (University of North Carolina Press, pp. ix, 213), has added a great deal of interesting and significant information gleaned through a careful perusal of the letters and papers of early American statesmen, biographies, journals and papers of the Continental Congress, and other sources, concerning the personalities and issues which influenced the types of administrative organization employed during this era and which laid the foundations for our existing national administrative system. The author

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has made extensive use of the published and unpublished letters of members of the Continental Congress edited by Dr. E. C. Burnett, of the Department of Historical Research of the Carnegie Institution. Introductory chapters to Parts I and II summarize developments during the periods 1774–81 and 1781–89. A chapter on the secretary of Congress and a brief statement on the executive departments established under the Constitution close the volume, which is a valuable contribution to the administrative history of the United States, as was the author's earlier study, *The Presidency of the Continental Congress*.—LLOYD M. SHORT.

The second edition of Louis Martin Sears' *A History of American Foreign Relations* (Thomas Y. Crowell Company, pp. xiv, 706) is an adequate but conventional survey of American diplomacy. The author's treatment is chronological and covers the period from colonial days to the present administration. If one may judge by documentation and bibliography, much reliance has been placed on secondary material, and in a few instances recent revelations modifying earlier conclusions have been neglected, e.g., those concerning the part played by Downing Street in the early stages of the second Venezuelan controversy. The sprightly style adds to the readability of the volume.—RUSSELL H. FITZGIBBON.

Dr. John A. Lapp and Mr. Robert B. Weaver are the authors of a new textbook on civics for secondary schools entitled *The Citizen and His Government; A Study of Democracy in the United States* (Silver, Burdett, and Co., pp. vii, 680). The approach is functional, with much attention to social background; and emphasis is placed upon the citizen's interests and responsibilities. Upwards of a hundred pages are devoted to the operation of government in foreign lands and the rôle of the United States in world affairs. The book abounds in lists of questions and problems; but the reference lists would have been more useable if the particular edition of certain of the works cited had been indicated.

STATE AND LOCAL GOVERNMENT

The fifty-four page report, *Standardized Accounting—Reporting—Auditing*, published recently by the Kansas Legislative Council, is prefaced by two valuable and comprehensive tables on state supervision of local finance. These tabular summaries of the legal status and administrative details of such central control in each of the states—borrowed from an extensive study of the subject now being prepared by Wylie Kilpatrick —form an excellent factual background for the presentation of the other material. The report itself is divided into five main sections: (1) standardized accounting; (2) standardized reporting; (3) standardized auditing; (4) cost of standardized systems now in use; and (5) a compendium

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of the opinions expressed by local officials and public accountants of Kansas on the desirability of state-wide standardized systems in that state. Of real practical significance is the emphasis on the fact that while uniformity of accounting procedure is desirable, this alone is meaningless unless the resulting data are correlated and utilized by means of uniform reporting. While the material contained in the report will unquestionably constitute interesting and helpful reading for teachers of state and local government, the reviewer feels that, as a research report, the publication falls below the level set by previous studies of the Council. In the first place, although the advantages of uniformity in local financial systems do undoubtedly outweigh the arguments against it, the latter are dismissed in too perfunctory a way, and the major one—the desire to avoid top-heavy state capital control—is merely hinted at and neither clearly stated nor adequately answered. Second, it is questionable whether the practical value of the many quotations outweighs the distinct loss of clarity and coherence of presentation involved in this method. Certainly a busy reader would welcome a succinct summary of the major points in each section. The reactions of men actively engaged in state and local finance naturally are of vital interest to legislators (for whom, of course, the report is primarily prepared), but it is immediately apparent that both state officials and public accountants would be likely to favor uniform systems, while the inclusion of statements by local officials in order to avoid a "weighted" opinion lose force because they are not signed. Most of this criticism, it is obvious, is leveled at the *method* employed in the report, and the interesting point of an effective technique for studies directed toward the enlightenment of state legislators is thus introduced. This is merely another phase of the old question of authoritarianism versus unbiased factual data. Dr. Guild, director of the Council's research staff, would contribute invaluable material on this subject could he in the future publish a comparative appraisal of the legislative results achieved by the various types of research work undertaken by the staff. The recent adoption by the Kansas legislature of the recommendations on standardized accounting and reporting, in modified form, presents an opportunity to begin such an evaluation of techniques.—GEORGE C. S. BENSON.

The Kansas Legislative Council, with the assistance of Dr. Frederic H. Guild as director of research, has been making some substantial contributions to the literature of political science. In *Expediting Legislative Procedure* (mimeo. pp. 45), some outstanding defects in the procedure of the state legislature of Kansas are analyzed and remedies suggested. The defects which are dealt with are not peculiar to Kansas. They include the heavy overloading of a few important committees; overlapping of com-

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mittee memberships, with the consequent conflicts in committee meetings; time-consuming unopposed roll calls; congestion of the calendar at the end of the session; and the time spent in reading bills aloud. The remedies proposed include the division of certain important committees; a better control system for reference of bills during the session; a reduction in the number of committees; the use of special calendars for unopposed bills; the use of electrical voting; and the interpretation of the constitutional requirements for one reading at length as having been satisfied if the bill has been printed for a sufficient time before the vote to allow it to be read by all of the members. In the words of the report: "'Expediting legislative business' is the opposite of hasty legislation. Economy of time where speed is safe and possible provides extra time where deliberation is necessary. Lack of proper deliberation is the prime factor in hasty legislation. . . . The purpose of the possibilities suggested would not be to increase hasty consideration of bills, nor to rush matters through in an unseemly manner. The effect would be primarily to guarantee that the mechanics of passing bills on which there is no contest should be reduced to a minimum to permit better use of the remaining time to relieve congestion in the consideration of important legislation."—HARVEY WALKER.

In recent years, studies of the organization and cost of county government in various states have been both numerous and voluminous. *County Finances in the State of Washington* (University of Washington Publications in the Social Sciences, Vol. 5, No. 4, pp. 271–374), by Joseph P. Harris, was undertaken, during 1933, at the request of the Washington State Emergency Relief Administration. The emphasis in the work is upon the ability of counties to finance unemployment relief and public welfare activities. Notwithstanding this emphasis, the report raises questions regarding the entire field of county administration. In the main, it parallels findings in other states. Many counties are too small for satisfactory administration of existing functions. The high per capita costs and low administrative standards of small counties demonstrate the author's contention. In the counties of Washington, as elsewhere, the absence of financial officers with power to keep expenditures within receipts has had only too natural results. Counties have issued warrants to pay salaries and expenses when funds were not available. This practice of piling up warrant indebtedness is roundly criticized. It has forced contractors and employees to carry the floating debt of counties. At the end of 1933, outstanding county warrants amounted to ninety per cent of the assessed valuations. Substantial reductions have been made in costs for personnel, supplies, replacements, and capital outlays. The costs of welfare, on the other hand, and debt charges have increased. The study shows

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that under present tax limitations in Washington the counties "could not bear half or any appreciable part of the unemployment relief cost unless they were relieved of some other burdens." State responsibility for poor tax collections in local units is not glossed over by the excuse offered by the depression. Tax delinquency cannot be attributed solely to hard times. Tax legislation, methods of assessment and collection, ineffective penalties for delinquency, and local governmental organization itself, are equally culpable. In conclusion, there is a detailed analysis of the financial conditions in four counties—King, Pierce, Spokane, and Grays Harbor. The study is replete with charts and tables dealing with fiscal problems. The effect of the present emergency upon county finance is uppermost in the author's consideration. It is an argument at once for an immediate reorganization of county government and for a permanent readjustment of functions between nation, state, and county. The issue of the future allocation of welfare and relief activities, as between federal, state, and local governments, is well defined by this report.—ARTHUR W. BROMAGE.

In *The Reorganization of County Government in Ohio* (pp. 190), a report of the Governor's Commission on County Government, are given the results of the commission's work, including suggested measures for county reform. The volume is a thoroughgoing examination of county administration in Ohio, although serviceable as a handbook of needed reform throughout neighboring states. The changes suggested are not unfamiliar to students, but still unknown and unheeded by the voter. They include centralization of authorities, abolition of countless independent units, increased state control, especially in relief, finance, health, and police activities. Particularly interesting are the suggestions for establishing county merit systems under control of the state civil service administration. A conspicuous fault in the state is the absence of planning power in the counties. Charles P. Taft, II, was commission chairman and Raymond C. Atkinson research director. *The Ohio Poor Law and Its Administration* (University of Chicago Press, pp. 233), by Aileen E. Kennedy and S. P. Breckinridge, is the first of a new group of monographs to be entitled Poor-Law Studies. An historical presentation of poor-law developments from the establishment of the Northwest Territory down to date presents vividly the failure of American local government to achieve adequate standards of administration. As shown here, undue litigation has been induced by the use of settlement in townships as the basis of relief. The decisions made necessary by incomplete statutes have been left to state courts and the attorney-general, with resulting confusion as to the actual legal situation. Depression reforms have not permanently altered this basic pattern grounded on rural standards. Cases, statutes, and opinions

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are given in the appendices under the editorship of Professor Breckinridge.—Lee S. Greene.

The search for new sources of revenue to make up for the shrinkage from traditional sources gives great value to studies intended to make available to individual units in a federal union the experience of other states. This service is adequately performed by two studies recently issued by the League of Minnesota Municipalities, *Sales Taxes* (pp. 88), by Carl L. Nelson, Gladys C. Blakey, and Roy G. Blakey, and *Inheritance Taxes* (pp. 48), by Glen R. Treanor and Roy G. Blakey. Because of the greater variety of levies possible under the name of "sales tax," the former study is considerably longer than the latter. Both subjects are examined with primary reference to the revenue possibilities of the tax for Minnesota. This, however, does not prevent concise and illuminating discussions of the theory of sales and inheritance taxes and of the legal and administrative difficulties involved in their adoption. Each study not only deals adequately with the experience of other jurisdictions which have made use of these taxes, but also points out needed changes in local law and administrative practice in case of their adoption or extension. Such knotty questions as the incidence and economic and social effects of various types of sales and inheritance taxes, their possibilities as "replacement" taxes, and the fitting of an individual tax into a revenue system are discussed with admirable clarity. Though considerations of space prevent these studies from having the pretentiousness and the detailed thoroughness of other special works, they strike the reviewer as having great value in supplying in compact form the essential information needed by busy citizens and legislators. Each study contains numerous statistical tables, a brief bibliography, and an adequate index.—Lane W. Lancaster.

The problem of bank taxation involves a wide legal, historical, and factual background, as well as some profound questions of tax philosophy and tax policy. These questions cannot be answered without careful weighing of the entire tax system. This is a large order for a 250-page monograph, but in *State and Local Taxation of Banks in the United States* (Albany: J. B. Lyon and Co.), Ronald B. Welch covers it, and in the main covers it well. The first two chapters are devoted to the historical and legal background. Then the author considers each of the several ways in which banks and their stockholders are taxed: on the assets, on the shares of stock, on bank deposits and notes, on net income, on franchises measured by net income, on dividends. A chapter is devoted to the taxation of other financial institutions, and a concluding chapter considers the position of bank taxation in the general tax system. An extended bibliography and a list of cases are added. The author's main conclusion is

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that the attempt to tax bank shares like other property is unsound, and that banks should be included with other business under a business tax based upon operating net income; that is, "net earnings available to all the contributors of capital." New York State is one of the few places where the legislature, the tax commission, and the institutions of learning coöperate to do effective research on special problems of state taxation. This latest effort is a worthy addition to its series.—HAROLD M. GROVES.

Today there is much discussion about pressure groups and education. There have come from the press in the last few years several bulky studies of these forces and their interplay with educational processes, particularly of those groups which are patriotic and have primarily a political leaning. In his *The Legal Status of Church-State Relationships in the United States, with Special Reference to the Public Schools* (University of Minnesota Press, pp. ix, 332), Alvin W. Johnson has made a commendable contribution to this literature in that he has brought together a body of information relating to religious agencies and public education. In his conclusion, the author indicates that because "the American states consider that religious doctrine has no legal status, because they guarantee and promote the same citizenship for all classes without respect to race or creed, it seems reasonable that we should eliminate discriminatory legislation from state-supported schools." His conclusion has been reached through a study of an historical nature, showing the trend of these forces from early Puritan days. The author describes how the American principle of separation of church and state has encouraged legislation for religious education, chiefly through Bible-reading in the schools. In this way primarily, religious instruction must be accomplished if it is to be introduced into secular education. To that end, states have enacted laws permitting or requiring the reading of the Bible, which has also come into the daily schedule through administrative order. All of these enactments have tended to bring to the attention of the courts the question of whether this activity does not inculcate religious doctrines. The book shows, in interesting array, various decisions that have been reached relating to the question in general. Mr. Johnson has divided his volume into a logical organization of those schools which require Bible-reading, those which permit it, and those in which it is prohibited. Particularly do Catholic taxpayers object to the use of the King James version of the Bible, and other religious sects have raised objections on other grounds. The book is well written and well documented. An appendix offers a useful and accessible source of statutes, and the index is adequate. To the literature of this increasingly significant consideration of influences outside the schools, Mr. Johnson has made a worth-while, unpartisan, and scholarly contribution.—BESSIE LOUISE PIERCE.

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Employers' Liability and Workmen's Compensation in Arizona (University of Arizona Press, Social Science Bulletin No. 7, pp. 116), is a study by Victor DeWitt Brannon of the legislative and political history of these two forms of labor legislation in Arizona since 1896. According to the foreword, the investigation was originally undertaken as a master's thesis and during the summer of 1934 was revised and developed into its present form. Using as his chief sources of information the newspapers of the state and personal interviews, the author unfolds in chronological order the events leading to the enactment of the workmen's compensation amendment and law of 1925 and the attempts since that date in the direction of revision and repeal. While the administrative and legal aspects of this legislation are not overlooked, the analysis throughout appears to be that of one interested primarily in the political history of the movement. The comparative simplicity of the economic structure of the state, with its consequent elimination of many disturbing factors, has, undoubtedly, been of substantial assistance to Mr. Brannon in isolating the various pressures brought to bear first on the territorial legislature, then on the constitutional convention, and still later on the state legislature. The author's willingness merely to present his facts, together with some obvious conclusions, does not entirely compensate for the absence of a final interpretative chapter. The chief value of the monograph lies in its presentation in concise form of materials and opinions not readily accessible to investigators outside the state of Arizona.—J. F. ISAKOFF.

The American Way (McGraw-Hill Book Company, pp. xii, 206), by John W. Studebaker, is a plea for federal support for adult public forums of the sort that have been conducted in Des Moines, Iowa, under the auspices of the local board of education, aided by the Carnegie Corporation. Dr. Studebaker indicates that he thinks the future of democracy in America could be made more secure by the establishment of such forums. A statistical survey of the results of the Des Moines experiment led him to conclude that civic interests increase with increased opportunities for social education, that adults beyond formal school days must not be expected by accident to pursue and push toward maturity the budding civic interests aroused in school, and the public forums constitute at once an economical, practicable, and effective means of insuring the essential growth in civic enlightenment among adults without which democracy cannot survive. Dr. Studebaker does not discuss some of the political aspects of his program. In some cities, the politicians do not want to have the public enlightened and would fight forums of the type he describes. The grant of federal funds to local school systems would raise the question of denominational private schools in the United States.

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Perhaps the new commissioner of education is now facing some of these problems. At any rate, he is to be complimented for the graphic account he has given of a significant educational experiment.—HAROLD F. GOSNELL.

The *Housing Officials' Yearbook* (National Association of Housing Officials, pp. 72) gives to both the student and the inquiring citizen baffled by the multiplicity of projects of government agencies, a good cross-section of the low-cost housing movement in the United States. The problems and policies of the Housing Division of the Public Works Administration, the Subsistence Homesteads Division of the Department of the Interior, the Federal Housing Administration, the Federal Home Loan Bank, and the Home Owners' Loan Corporation are reviewed briefly. The beginnings of several local housing programs are described, and state and local public bodies having powers to undertake housing developments, and the legislation for the creation of these bodies, are listed. An excellent bibliography and a statement of the functions of the National Association of Housing Officials conclude a helpful handbook.—HELEN I. CLARKE.

FOREIGN AND COMPARATIVE GOVERNMENT

Not often is there made available in English translation an Oriental manuscript of interest to students of government. Such is the case, however, with the volume entitled *Ottoman Statecraft: The Book of Counsel for Vezirs and Governors of Sari Mehmed Pasha the Defterdar* (Turkish text, with introduction, translation, and notes by Walter Livingston Wright, Jr., Princeton University Press, pp. xv, 172, 135). Sari Mehmed Pasha was one of a small number of Ottoman statesmen who were deeply concerned over the decline of the Empire after the end of the sixteenth century. In the manuscript here translated, he left descriptions of contemporary conditions as well as suggestions for reform. The work is intended as a guide for high officials of the Ottoman government; in this lies its greatest value. We have here an opportunity to learn what was regarded as right and wrong, good policy or bad, by an honorable and conscientious servant of the Ottoman government during the early years of the eighteenth century. By itself, an English translation of Sari Mehmed Pasha's work would leave many questions unanswered. Professor Wright has anticipated them and has wisely included material in his notes which makes the translation of enhanced value. In addition to a discussion of authorship and manuscripts, there is included a biographical sketch of Sari Mehmed Pasha, as well as a helpful outline of the Ottoman system of government. All Occidental students of Near Eastern history and government will thank Professor Wright many times for

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bringing within their reach, in comprehensible setting, a criticism of Ottoman culture of unique value.—DONALD C. BLAISDELL.

In writing *The British Attack on Unemployment* (Brookings Institution, pp. xiv, 325), A. C. C. Hill, Jr., and Isador Lubin have performed a valuable service for Americans interested in the solution of the problem of unemployment. Great Britain has experimented extensively with the principal unemployment policies now being utilized in the United States. She has tried a nation-wide system of employment offices, extensive public works for unemployment relief, nationally directed programs for re-training the unemployed, transfer of "stranded populations" from depressed to more prosperous areas, unemployment relief, and unemployment insurance. Her experience has demonstrated the strong and weak points, the possibilities and limitations, of these different policies. The present book gives in clear language a vivid picture of the policies themselves and a careful evaluation of them. The reader will find abundant opportunity to compare and contrast American methods of handling relief, public works, transient labor, stranded populations, the juvenile unemployed, and public employment offices with British methods and experience. The chapters on relief works, the partial breakdown of British unemployment insurance, and the necessity of relief as a supplement to unemployment insurance are of particular significance to Americans at the present time.—DON D. LESCOHIER.

Mildred S. Wertheimer's *Germany Under Hitler* (Foreign Policy Association and World Peace Foundation, World Affairs Pamphlet No. 8, pp. 48) presents an analysis of the causes of the Nazi revolution and of its results which is much less detailed and more popular than her chapter on Germany in *New Governments in Europe.* Without academic paraphernalia, the pamphlet presents a sound, elementary interpretation. Miss Wertheimer's conclusions are interesting, but not startling. In view of the success of "coördination," she sees no immediate prospect of an overturn of the Nazi régime. But, since the party has been weakened by internal dissension, by the purge of June, 1934, and by the reorganization of the Storm Troops, there remain today three principal sources of authority: Hitler, the mass leader, Dr. Schacht, the economic ruler, and the *Reichswehr.*—JOHN D. LEWIS.

La Vie Politique et Constitutionnelle des Peuples, Année 1934 (Librairie du Recueil Sirey), compiled for the Union Interparlementaire by Leopold Bossier and B. Mirkine-Guetzévitch, is the fourth annual volume in a series designed to bring together the most important information concerning current constitutional developments and legislative output in

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practically all countries of the world. That this information is presented in extremely brief form is indicated by the fact that the extraordinary record of the United States for the year chronicled (1933) is compressed into a dozen pages—too little, obviously, to be of much use. As a summary covering the world at large, the volume, nevertheless, has certain utility; and miscellaneous data, such as lists of cabinet members, make for the convenience of those using it.—F. A. O.

The story of the booms and crises which have characterized Brazilian economic development occupies the introductory chapters of J. F. Normano's *Brazil: A Study of Economic Types* (University of North Carolina Press, pp. 253). This is followed by discussion of the degree to which Brazil has been buffeted by the shifts in the economic cycles of the world and a summary study of banking and public finance in the republic. These latter chapters present much material not heretofore available in English and give a good picture of the weakness which a narrow base of economic activities introduces into the financing of many Latin American states.—CHESTER LLOYD JONES.

Political Handbook of the World; Parliaments, Parties, and Press as of January 1, 1935 (Harper and Brothers, pp. 201), edited by Walter H. Mallory and published for the Council on Foreign Relations, is the latest issue in a series now so familiar to students of world affairs as to require no special comment. An invaluable collection of data is presented in the usual convenient form, and the volume takes its place among our most indispensable works of reference.

INTERNATIONAL LAW AND RELATIONS

The controversy as to the basis of interpretation to be applied to the Kellogg Pact—whether it stands alone as the brief document initialed on August 27, 1928, or is to be considered a complex of the correspondence and interpretations between and by the signatories—has been illuminated, if not resolved, by André N. Mandelstam's *L'Interpretation du pacte Briand-Kellogg par les gouvernements et les parlements des états signataires* (Editions A. Pedone, Paris, pp. 162). The author has explored the preliminary exchanges of notes, the subsequent parliamentary debates, and the various reservations attached to ratification or adhesion, as to four aspects of the treaty: the general effect of the reservations; the problem of a war of aggression and the right of legitimate self-defense; the absence of sanctions for its enforcement; and the obligation to apply only pacific means in the settlement of international disputes. Sixty of the 160 pages are devoted to the United States. France, Great Britain, Canada, Australia, South Africa, the Irish Free State, Germany, Italy,

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Japan, Belgium, Poland, and Czechoslovakia are included in the author's analysis of parliamentary debates and executive pronouncements. Not only is the book the most inclusive available description of the parliamentary stage of the evolution and application of the Treaty of Paris, but the general conclusions are, if not very novel, unequivocal. "[The Treaty] cannot be considered by itself; it forms a whole which includes the diplomatic correspondence prior to its signature and condensed in the United States note of June 23, 1928. All the reservations, interpretations, or explanations contained in that diplomatic instrument must be added to the text of the treaty itself. . . ." Moreover, the unilateral declarations and the reservations of adhering powers, "while they have no obligatory force for other signatories, indicate in advance the position of their authors." The resulting meaning and force of the treaty is "excessively vague and incomplete" as to each of the four phases considered. Dr. Mandlestam is especially severe on the reservation of the right of self-defense: "In accepting this reservation, the signatories have reduced to nothing (*a néant*) the meaning of the treaty. . . . The security of humanity cannot reside in obscurity nor in fallacious indefiniteness (*pénombre*)."—PHILLIPS BRADLEY.

Under the title *Europe—War or Peace* (World Affairs Pamphlets, No. 7, pp. 47), Mr. Walter Duranty has written for the Foreign Policy Association and the World Peace Foundation a clear and interesting survey of current diplomatic manoeuvres in Europe. As Russian correspondent of the *New York Times*, Mr. Duranty achieved a well-merited reputation for the excellence of his despatches. In this pamphlet, he analyzes with skill the motivating factors in the foreign policies of the Powers and the lesser states of Europe. The kaleidoscopic interplay of policy on policy is simplified into a not inaccurate pattern of the stabilizing and disruptive forces at work on the Continent. For the reader who has little time to keep abreast with foreign affairs, the pamphlet can be recommended as an excellent guide to the ramifications of the European scene. Professor Quincy Wright, of the University of Chicago, has performed a similar service for an understanding of the League of Nations in a pamphlet of twenty pages, *Where the League of Nations Stands Today* ("Day and Hour Series" of the University of Minnesota, No. 9). After a brief survey of the development of international organization, the author evaluates the current tasks which the League is performing in many fields, admits a failure here, signalizes a success there, and stresses the absolute necessity of the functions which the organization is attempting to fulfill. He concludes with a number of suggestive ideas looking toward a moderate revision of the Covenant. He is convinced that for many years the League must rely upon public opinion as its main sanction, but would like to see

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the balance-of-power principle strengthened by making the League Council a real council of the Powers. He suggests a world conference of League and non-League states to consider the problem of Covenant revision with the purpose of making the League universal.—HERBERT W. BRIGGS.

Relatively few studies have been produced in English which deal with the history of Morocco before 1900. In his *Morocco at the Parting of the Ways* (University of Pennsylvania Press, pp. xxv, 238), Earl F. Cruickshank has produced a well-documented study of native protection as it existed in Morocco in the latter half of the nineteenth century. The author describes the system by which foreign diplomatic and consular officials gradually extended protection to a large number of natives. The effect was to exempt natives thus protected from the agricultural and gate taxes of the government and led to numerous abuses in the hands of the more unscrupulous foreign officials. After various attempts on the part of the British representatives in Tangier to remedy the situation by local agreement, it was proposed to bring the question before an international conference. The Conference at Madrid in 1880, however, failed to achieve worth-while results. British efforts gained no support from the other powers. Further to complicate the situation, the terms of the Madrid Convention were interpreted individually by the Powers, and France began to use the system of protection of natives to extend her political influence in Morocco. The present study is an excellent case history of the working of the most-favored-nation principle in international politics. Each Power in Morocco was willing to make concessions to the Moroccan government if all the other Powers followed suit; and if one Power abused its privileges, all other Powers felt that they must do so for their own good. Thus no common agreement was possible; and as in numerous other examples of this sort, the object of the Powers' attention—in this case Morocco—was the principal loser.—WILLIAM C. JOHNSTONE, JR.

The Air Menace and the Answer (Macmillan Co., pp. xviii, 331), by Elvira K. Fradkin, with an introduction by James T. Shotwell, is an attempt first to depict the devastating possibilities, nay probabilities, of war in the air, and second to point a moral to the effect that irreparable damage to civilization can be avoided only by international coöperation in the prevention of the outbreak of war. The author offers evidence of the horrors of chemical warfare (which have been tremendously magnified by the applications of laboratory research), of bacteriological warfare, as well as the horrors of aërial bombardment and of the dissemination of noxious gases by aircraft. The introduction of the book by such a scholar as Professor Shotwell gives promise of a scientific and well-

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balanced discussion of the problem that Mrs. Fradkin attempts to solve. But, regretfully, we find that the propaganda for peace is not presented with a very subtle touch. Among experts, the quantitative effectiveness of chemical and aërial warfare is still a highly controversial question. There is need for a deft appraisal of all the evidence in this field, and it is probable that a trained social scientist can achieve the feat more successfully than a military or a chemical expert. At all events, the task remains to be accomplished. And, it should be added, the book under review confuses rather than aids in such an appraisal. Even in the matter of reviewing the literature of the subject, the volume shows serious gaps. For instance, there is no mention of the theories of General Giulio Douhet, whose *Il Domino dell' Aria*, has had far-reaching influence throughout both the Eastern and Western hemispheres.—KENNETH COLEGROVE.

In view of the fundamental importance of British-American relations, a welcome should be accorded to Beckles Willson's *Friendly Relations: A Narrative of Britain's Ministers and Ambassadors to America, 1791–1930* (Little, Brown and Company, pp. xiii, 350), which approaches the subject from the biographical angle. The book gives a running sketch of British-American diplomatic relations as seen through the eyes and writings of the forty British envoys to the United States, including such distinguished men as Sir Henry Bulwer-Lytton, Sir Julian Pauncefote, Lord Bryce, and Lord Reading. A preface is supplied by Sir Ronald Lindsay, present British ambassador to the United States. The book is based on original sources, both published and unpublished, transcriptions having been made from the English Foreign Office correspondence. It is replete with personal incidents, often in documentary form, and makes delightful reading. Interesting side-lights on American political conditions are also included. Readers looking for a systematic account of British-American relations will be disappointed, since the general aspects of the subject are subordinated to biographical interest. Colonel Willson is a Canadian, and, although the book is written mainly from the British point of view, no unduly critical attitude toward the position and policies of the American government is noticeable.—J. M. MATHEWS.

A standard volume on international organization has gone into its fourth edition in the recently published revision of Pitman B. Potter's *An Introduction to the Study of International Organization* (D. Appleton-Century Co., pp. xviii, 645). The author's expressed purposes are to present a scientific description and analysis of the methods and agencies used in the conduct of international transactions and to evaluate these facilities from a logical and ethical position "in view of the needs of the nations

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and the international community." He has succeeded extremely well in realizing these aims. The work presents a well organized, lucid, and readable account of the increasingly elaborate nexus of agencies which are being established to deal with the common concerns of members of the international family. In organization, the volume is patterned after the earlier editions, the five parts treating successively of the bases of international organization, international coöperation, international organization, its functions, and the League. A broadly selected list of documents is added in a lengthy appendix. The vitality and intimacy of the volume are heightened by the more than two years of service by Professor Potter on the faculty of the Graduate Institute of International Studies at Geneva.—Russell H. Fitzgibbon.

Liberia in World Politics (Arthur H. Stockwell, Ltd., London, pp. 406), by Nnamdi Azikiwe, is a comprehensive and very readable diplomatic history of Liberia. About three-fourths of the book is devoted to the period beginning with the Firestone loan and concession. While the author is not uncritical of Liberian administration, policy, and diplomacy, he vigorously defends Liberia against the charges brought against her and is sharply critical of the policies of the Great Powers with respect to her. The League of Nations is not spared. While "not of the opinion that the League of Nations is a total wreck beyond repair," the author nevertheless fears that it stands in grave danger of becoming "merely another contraption of imperialism." He concludes that Liberia's continued existence is essential to "a retention of the confidence of Africans in the League of Nations and in the Western World." The book has a strongly emotional quality—a quality which springs from the fundamental thesis of the author that Africans and peoples of African descent throughout the world are destined to impress upon the world a new civilization, but that this cannot be accomplished in the Western world. "Liberia is the nucleus of black hegemony. In that republic lies the hope of an African civilization."—Amry Vandenbosh.

In his study entitled *The First American Neutrality* (*Illinois Studies in the Social Sciences*, Vol. XX, Nos. 1–2, pp. 178), Professor Charles S. Hyneman has made a timely contribution to a subject of current importance. Neutrality being at the close of the eighteenth century but a "noble experiment" (p. 163), that proclaimed by President Washington in 1793 "perhaps more completely than any other, marked the transition from the era of benevolent or limited neutrality to the modern era of impartial conduct." Improvement of the commercial situation of the United States, rather than a sense of binding obligation, is believed to have furnished the principal reason for the announced policy. If the latter had included, at

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this formative stage, a prohibition upon dealing in contraband by American citizens, "the practice of nations in future wars might have been turned in the same direction" (p. 149). Enforcement raised many specific questions on which the then existing international law furnished no clear answers; it was successful in spite of serious difficulties and the absence, during the first year, of a neutrality statute. Neutrality continued for twenty years, and Professor Hyneman concludes that the praise accorded those maintaining it has been well placed.—ROBERT R. WILSON.

Hector C. Bywater's *Sea-Power in the Pacific; A Study of the American-Japanese Naval Problem* (Houghton Mifflin Co., pp. xxv, 327) is a new edition of a book published thirteen years ago, at a time when war between the United States and Japan was widely believed to be only a question of time. All that is new, however, in the present volume is an additional preface and two appendices showing the strength of the United States and Japanese navies as of 1934. The new edition is regarded by the author as timely, not only because of what is happening to the Washington Conference agreements, but because "the passage of thirteen years, so far from eliminating or even blunting the points at issue between the protagonists of 1921, has only served to sharpen them." Mr. Bywater believes that as soon as a reasonable measure of economic prosperity shall have been restored in our own country, we shall reassume a stiff attitude toward Japanese imperialism in China, and that our protest will be "the more violent because of its long repression."

International Law Situations; with Solutions and Notes (Washington: Government Printing Office, pp. 150), a volume prepared by Professor G. G. Wilson, continues the plan of the more recent volumes in the series in setting hypothetical problems and giving their solutions, together with a selection of relevant materials. Naturally, the solutions do not escape the controversies imminent in the materials. This is especially true of Situation I, dealing with contraband and blockade, though the materials included give an excellent view of the present state of the law. Situation II raises questions concerning the neutrality and the neutralization of the Philippines, "independent" under the act of 1933. This seems the most stimulating of the problems. Situation III deals with straits in peace and war, and does not neglect reprisals, self-defense, and the Pact of Paris. Accustomed to greet this annual visitor with respect, the reader finds this volume no exception.—LLEWELLYN PFANKUCHEN.

The tenth *Armaments Year Book* (Geneva, 1934, pp. 1052) lists the latest official information concerning the armaments of sixty-four countries. Each country is the subject of a brief monograph preceded by a table

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which provides general statistical information. Special attention is given to colonial forces. For purposes of economy, this edition of the *Year Book* has discontinued the publication of information on raw materials and other products affecting national defense. For this data the student may be directed to the 1933–34 edition of the *Statistical Year-Book of the League of Nations* (Geneva, 1934, pp. 299), which continues to be by all odds the most valuable collection of general information published anywhere.—GRAYSON L. KIRK.

President Mary E. Woolley has drawn on her experiences at the Geneva Disarmament Conference for a tiny volume, *Internationalism and Disarmament* (Macmillan, pp. vi, 38), published in the Kappa Delta Pi lecture series. It consists of a rather unsuccessful attempt to sketch the troubled history of the Conference as a basis for a plea for peace education and tolerance. Especially questionable is the author's assertion that "if, in June, 1932, the British Empire and France had given to the Hoover Plan the same wholehearted support that Italy gave, . . . the extreme swing of Germany toward the Nazi régime might have been checked."—GRAYSON L. KIRK.

The American University at Beirut is in process of publishing a post-war bibliography for the mandated territories of the Near East. The completed work, which will consist of eight separate sections divided by language groups, may be purchased separately or bound together in two volumes. The recently published French language section entitled, *Éléments d'une Bibliographie française de l'après-guerre pour les États sous Mandat du Proche-Orient* (Beirut, pp. xviii, 210) lists, both by authors and by subjects, 3,359 titles. The completed work should be of great value to students of Near Eastern Affairs.

The latest product of the State Department's new publishing activities is *Papers Relating to the Foreign Relations of the United States, 1919* (two vols., Government Printing Office, pp. xcvii, 894; lxxxi, 913). Nearly half of the first volume is devoted to documents pertaining to our relations with China (*in re* the new international financial consortium, the Shantung controversy, the Chinese Eastern Railway, etc.); while the bulk of the second volume has to do with our dealings with the various states of Latin America. The volumes are prefaced by convenient dated lists of the papers included and close with the usual satisfactory index.

POLITICAL THEORY AND MISCELLANEOUS

Such assurance and comfort as is available to liberals in a world that seems to be growing increasingly insecure and intolerant is afforded by

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Everett Dean Martin's *Farewell to Revolution* (W. W. Norton and Co., pp. xx, 380). In his use of the term "revolution," the author distinguishes between revolution as designating "a cycle of progress through the ages" and revolution as "a sudden violent seizure of power by a faction." He sees no objection to the first use of the term, but insists that proponents of revolution make clear in which sense "revolution" is used. The book is devoted to an historical review and a psychological interpretation of the ten major revolutions of the Western world which have been characterized by the violent seizure of power by factions with a view to promoting social betterment and change. It is the author's contention that such movements are a stereotyped form of social behavior and that factors of crowd psychology are operative in these movements to the point where not only are the original objectives not realized, but the results are destructive of social gains already slowly and laboriously achieved. "Effective social change," affirms the author, "has always been the result of intelligent "social planning" and is the work of the few. Into this process of gradual betterment the revolution by violence intrudes as a "social earthquake," an invasion and conquest by barbarians, a "supreme exhibition of mob behavior." In the drafting of this thesis, the author studies the experiences of the Western world when resort to revolution by violence is had. He comes to the conclusion that a better society cannot "be created by partly civilized people nor by people who still idealize Rousseau's "noble savage," nor by undifferentiated man acting as a mass." The book closes with a reaffirmation of that "philosophy of freedom, reasonableness, and the good life which has distinguished liberalism since the days of Socrates." With new emphasis, the author lays upon education the burden of exalting intelligence and of liberating the mind.—Russell M. Story.

In his *Political Ethics* (Thomas Y. Crowell, pp. xviii, 288), Daniel S. Robinson ventures to establish objective tests of the ethical content of existing polities. Following Hocking, he presents as a realizable ideal state one in which "the rulers encourage the formation of individual ideals," "economic values are duly subordinated to cultural values," and where "the state leaves its citizens as free as possible in the expression of their criticisms." His ideal state, in other words, must satisfy the human drives for "appreciation," "ambition," "creation." On test, the USSR, Fascism, and "representative democracies" all show defects. The last, for example, has never prevented the struggle for wealth from becoming "a game of grab," while "the decay of religion" in representative governments is too serious a matter to be neglected. Yet democracy stands up best under examination. But today it is threatened by war. The author therefore devotes five chapters to a study of international relations, in the course of which are made penetrating comments on the "rights of backward

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peoples." Disappointed with the developed League of Nations, Professor Robinson proposes its reconstruction by means of a World Parliament of lay delegates from all the free peoples of the earth ((particularly Britain, France, and America). "What we need is an organized body of world opinion functioning to force states desirous of acting on the principle that might makes right to yield to the superior force of those who believe that rights and duties between peoples are ethically and legally determined. . . . For moral power is more potent in the end than military power" (p. 242). The book was written, we are told, to provide a basis for discussion of the application of ethical principles to political relations. To this end, an appendix presents thirty "cases for discussion," on such matters as the MacIntosh case, the Platt Amendment, and the British referendum on the League.—ALLAN F. SAUNDERS.

In the growing attention which is now being devoted to the position of organized labor in the recovery program, Matthew Woll's *Labor, Industry, and Government* (Appleton-Century, pp. 341) deserves a wide reading. The author, a widely known and respected vice-president of the American Federation of Labor, devotes his book to a comprehensive and well-reasoned exposition of the attitude of organized labor on such questions as economic planning, utility regulation, injunctions, collective bargaining, and foreign trade. He considers that consumer protection, the preservation of political rights, and freedom from injunctions should not be overshadowed by what is usually called social or labor legislation, strongly as labor favors the latter also. Cool towards a separate labor party, Mr. Woll declares that labor's voice has counted politically. "We have always realized fully as much because of the massed economic power of our unions as because of the massed influence of our vote." Legislative and other remedies for unemployment are approved, but the one lasting and scientific remedy is held to be high wages in order that mass consumption can keep up with mass production. The "one immediate and infallible remedy, always applicable, is a shortening of the working day or week, or both, without any lowering of the wage." As to economic planning, Mr. Woll entertains no illusions. "A government that plans and that has power to enforce the plan must be possessed of a degree of power which labor cannot contemplate in contentment. Excessive or undue governmental planning leads almost surely to dictatorial power." He therefore favors coöperative planning by industry and labor rather than by the coercive force of government. On foreign trade problems, the author takes a middle of the road position; but he strongly opposes any widespread reliance on such trade, since this must inevitably bring the worker into direct competition with foreign workers. For like reasons, he opposes the Congressional delegation of tariff-making powers to the President. Similarly, the

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control of labor either by a dictatorial government or by an *Internationale* is rejected. Mr. Woll presents the best statement of the Federation's principles and policies which has yet appeared.—JAMES T. YOUNG.

Dr. Cromwell Holmes Thomas has performed a useful service in bringing together the information that appears in *Problems of Contempt of Court; A Study in Law and Public Policy* (Horn-Shafer Co., Baltimore, pp. viii, 120). Jurisdiction to punish for contempt plays an important part in our system of judicial administration, and the problem has become increasingly important with the creation of numerous statutory contempts, particularly with respect to the use of injunctions in enforcing liquor and other laws and in the compelling of testimony before administrative bodies. The author's discussion of executive pardoning power in contempt cases is especially interesting, but he does not, here and elsewhere, give sufficient weight to the judicial distinction between civil and criminal contempt. It is true that the distinction is a purely arbitrary one, and that the courts, while using it, have been uncertain as to where the line of distinction is to be drawn; but, after all, it constitutes an essential element in judicial discussion. Statutory contempts are often of a new type, not capable of fitting into the established judicial classification into civil and criminal contempts. More attention might also properly have been given to the use of contempt punishment as an aid to compulsion of testimony before administrative tribunals—a power not denied since the case of Interstate Commerce Commission v. Brimson, 154 U.S. 447 (1894). The author is incorrect in indicating that there has been a complete abandonment of purger by affidavit in indirect contempts. The old law as to the matter still persists in Illinois and perhaps elsewhere. This small volume does not, however, purport to cover the subject completely and is of distinct value to the student of judicial power and of constitutional law.—WALTER F. DODD.

If one may judge from the first of the twelve projected volumes, the translation of Lenin's *Selected Works* from the Russian text issued by the Marx-Engels-Lenin Institute will be a very useful source of information on the development of Lenin's thought. The selections in the present volume, *Prerequisites of the First Russian Revolution* (International Publishers, pp. 560), are taken mainly from Lenin's writings of 1894–99 inclusive, and include a detailed study of Russian agricultural trends, the essential parts of *The Development of Capitalism in Russia*, some brief polemics against the Narodniki and the "legal Marxists," and formulations of revolutionary policy. These extracts give excellent illustrations of Lenin's genius for significant analysis of statistics, and also throw into clear relief the contrast between Lenin's thought and that of the Narodniki of the

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period. The volume is prefaced by an outline of the volumes to follow, a convenient hundred-page biography of Lenin by V. Sorin, and a brief, orthodox essay on Leninism by V. Adoratsky. Explanatory notes at the end of the book give, in valuable detail, the setting for each of the writings translated.—JOHN D. LEWIS.

Frederick Engels' *Anti-Dühring* is now available in a complete English translation: *Herr Eugen Dühring's Revolution in Science* [*Anti-Dühring*] (International Publishers, pp. 364; trans. by Emile Burns). Since Engels acknowledges that the ideas expounded in the book were to be credited more to Marx than to himself, and since Marx read the whole of the manuscript (p. 13), and presumably approved it, we may rightly accept the *Anti-Dühring* as one of the most important statements of the Marxian dialectical materialism. First published as a series of articles in criticism of Dühring in 1877–78, the book retains contemporary significance through the attention of those who, like Dühring himself, find it necessary to fit their socialist theory into an all-embracing philosophic system. Although encumbered by frequent citations from Dühring handled with ponderous irony, the exposition of Marxian dialectic is still superior to that presented by contemporary Marxists like Adoratsky or Rudas; and certain chapters (e.g., Part I, Chaps. 12 and 13, and Part III, Chap. 2) are excellent concise summaries of important features of Marxian theory. —JOHN D. LEWIS.

The political scientist will find in a recently published biography, *Edward Atkinson* (Boston, Old Corner Bookstore, pp. x, 304), by Harold F. Williamson, an account of the public services of a New England business man with varied civic intersts, including reconstruction in the South after the Civil War, factory construction, currency, and tariff revision downward, to which his associations in the textile industry and later in insurance led him. Atkinson is representative of the varied reform movements which were based upon a general acceptance of a *laissez-faire* philosophy, and upon an "automatic" operation of the "laws of competition," coupled with a strong sense of civic obligation.—JOHN M. GAUS.

The text of Machiavelli's *Il Principe* has been the subject of research which resulted in a definitive edition published at Florence in 1929; and in preparing a new edition of Luigi Ricci's translation for inclusion in the World's Classics series, Mr. C. R. P. Vincent made full use of the text in this most approved form (*The Prince*, by Niccolo Machiavelli, Oxford University Press, pp. vii, 119). The resulting little book is an extremely convenient form in which to use a work to which twentieth-century dictatorships are imparting fresh interest.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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State Department

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